

President William J. Clinton and the Use of Executive Orders in Foreign Affairs



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To my mum and dad, for believing in and supporting me.

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INTRODUCTION

According to the Federal Register, 7,800 executive orders have been issued from the presidency of Franklin D. Roosevelt (FDR) up until the present time, with the last order submitted to the Federal Register by President Barack Obama dated March 16, 2012. 3,728 out of these were issued by FDR alone. Albeit there was a sharp decline in the use of executive orders after the presidency of FDR and during the post-Second World War era, presidents have been accused of “using the prerogative power to turn the presidency into a dictatorship.”¹ One such review directed towards President William (Bill) J. Clinton’s use of executive orders, argues that Clinton “relied on his decree authority to ‘act dictatorially without benefit of constitutional color’”².

The issuance of executive orders is one out of several tools that presidents have at their disposal, which they can apply in order to implement policies and more controversially to expand their powers. During the twentieth and twenty first centuries Americans have witnessed a tendency of presidents increasingly claiming wide powers through the use of executive orders coinciding with an increase in the accumulation of powers in the field of foreign policy, eventually culminating with the presidencies of Richard Nixon and George W. Bush.³ In the book *Executive Orders and the Modern Presidency: Legislating from the Oval Office*, political scientist Adam L. Warber argues that “in essence, presidents can issue executive orders to maintain the complex and dynamic political environment in the executive branch in a manner that assists them in producing a more favorable environment to achieve their policy agendas.”⁴ Since the president as chief executive is the only person who has the authority to use executive orders, this policy tool “centralizes a portion of the policy process into the hands of the president”⁵; a vital aspect of the use of executive orders which has raised concerns both from within and outside the government.

The scope of executive powers has been debated as long as the American republic has existed. Warber argues that “historically, the exercise and expansion of presidential powers

¹ Kenneth R. Mayer, *With the Stroke of a Pen: Executive Order and Presidential Power*, (Princeton, New Jersey: Princeton University Press, 2001), 9; “Executive Orders Disposition Tables Index”, *Federal Register*, 16 March 2012, <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (20 April 2012)

² Mayer, 9

³ Arthur Schlesinger, *The Imperial Presidency*, (New York, NY: Houghton Mifflin Company, 1973); Andrew Rudalevige, *The New Imperial Presidency*, (Michigan: The University of Michigan Press, 2005)

⁴ Adam L. Warber, *Executive orders and the modern presidency: Legislation from the oval office*, (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2006), 6

⁵ Ibid., 14

has been under the close scrutiny of the legislative branch. If Congress perceives presidents as encroaching on its constitutional responsibility to legislate, its criticism toward the executive branch should rise.”⁶ However, contrary to this statement, scholar of constitutional law and public policy Louis Fisher and political scientist Kenneth R. Mayer argue that presidents have been able to claim powers as a result of precedence, by presiding presidents’ claim to power, followed by Congressional acquiescence, the repeated inability and unwillingness by Congress to counter the claims.⁷ Thus, presidents have been and still are able to use executive orders to expand their powers by taking a legislative role; hence executive orders pose as a controversial tool for the exercise of power and a potential threat to the system of checks and balances, which was implemented in the Constitution by the Founding Fathers to prevent a “one man tyranny rule”.⁸

In their respective works, scholars such as Phillip J. Cooper, Kenneth R. Mayer, and Adam L. Warber focus on the use of presidential direct action. While Cooper provides a broad overview of the different tools of direct action available to the executive in his book *By the Order of the President: The Use and Abuse of Executive Direct Action*, both Mayer and Warber place the focus explicitly on the use of executive orders in *With the Stroke of a Pen: Executive Orders and Presidential Power* and *Executive orders and the modern presidency: Legislating from the oval office*. However, Mayer argues that presidents continue to use “substantial unilateral powers” through the use of executive orders which have further permitted American presidents to increase their powers in foreign affairs dramatically since the 1930s.⁹ Warber challenges Mayer’s argument, claiming that there are indeed instances when presidents “act strategically in using executive orders to pursue major policy”, however, simultaneously “there are cases when presidents are rather reticent in exploiting this unilateral tool.”¹⁰

Political scientist John Dumbrell and historians Stephen E. Ambrose and Douglas G. Brinkley cover Bill Clinton’s foreign policy from his presidential campaign up until his final year as president. Dumbrell’s book, *Clinton’s Foreign Policy – Between the Bushes, 1992-2000*, takes into account the fact that Clinton was the first American president elected after the Cold War ended, and the numerous new foreign policy issues which faced the

⁶ Ibid., 22

⁷ Louis Fisher, *Presidential War Power*, 2nd revised ed., (Lawrence, Kansas: University Press of Kansas, 2004), 21; Mayer, 54-58

⁸ Mayer, 35 ; Warber, 3-7; U.S. Constitution, <http://www.archives.gov/exhibits/charters/constitution_transcript.html>, (23 April 2012)

⁹ Mayer, Preface, 138

¹⁰ Warber, 2

administration, including foreign economic policy and humanitarian interventions such as Clinton's interventions in Haiti, Bosnia and Kosovo.¹¹ In the book *Rise to Globalism: American Foreign Policy Since 1938*, Ambrose and Brinkley place Clinton's foreign policy within the narrative of the twentieth century's presidents as they chronicle the long period of American "rise to globalism", from the presidency of Franklin D. Roosevelt with the entrance into the Second World War, developing into a military superpower over the course of the next 50 years, through the Cold War, concluding with the presidency of Bill Clinton and the 1990s struggle to redefine the American role in the post-Cold War world.¹²

Dumbrell argues that Bill Clinton's presidency very quickly lost the interest of political analysts, scientists and journalists, and the attention in Clinton's second period was drawn towards his sexual rather than political activities. With the Republican George W. Bush winning the presidency after the 2000 presidential election, followed by the 9/11 terrorist attacks and the subsequent "War on Terror" within months after Bush taking office, Clinton was left to be remembered more or less as the "president who failed to protect Americans from international terrorism".¹³ This thesis will seek to regain focus on Clinton's foreign policy as part of the 1990s international community.

Clinton used executive orders for foreign policy purposes more than any other president. Seen in relation to the controversial nature of executive orders, more research is needed that takes into account the foreign policy issues which faced the Clinton administration in the post- Cold War era together with Clinton's use of the presidential "power tool" of executive orders as part of the foreign policy.¹⁴ What is original in this thesis, then, is the attempt to combine works of these scholars and fill a gap in the scholarship about Clinton's use of executive orders. Therefore, the central questions of this thesis are: How and why did President William J. Clinton use executive orders for foreign-policy purposes significantly more frequently than most of his predecessors in the 20th century?

The thesis will provide an assessment of Clinton's use of executive orders as part of his foreign policies. In order to shed light on different aspects of the use of executive orders, a case study of the humanitarian intervention in Kosovo with focus on Clinton's use of executive orders will be conducted. North American Area Studies is an interdisciplinary program which permits research to be conducted across academic disciplines, making available

¹¹ Ibid.

¹² Stephen E. Ambrose and Douglas G. Brinkley, *Rise to Globalism: American Foreign Policy Since 1938*, 8th revised ed., (New York, NY: Penguin Books, 1997)

¹³ John Dumbrell, *Clinton's Foreign Policy – Between the Bushes, 1992-2000*, (New York: Routledge, 2009)1

¹⁴ Philip J. Cooper, *By Order of the President: the Use and Abuse of Executive Direct Action*, (Kansas: the University Press of Kansas, 2002)preface

a variety of methodological approaches. Therefore, this thesis will apply methods from the disciplines of both history and political science, and will primarily rely on textual analysis of executive orders and historical accounts.

Working on this thesis has brought up several important and interesting questions related to the different subjects treated in the chapters. The disputed constitutionality of executive orders and the War Powers Resolution are recognized as important issues along with questions related to humanitarian interventions, international law, and state sovereignty. Further the merging of humanitarian interventions and executive powers in chapter four and five brings to the surface interesting questions in relations to the Constitution and the executive's conduct of military action abroad relying solely on international laws and resolutions. Albeit these are important questions, they require extensive analysis of both international and constitutional law, which I am not qualified to undertake. Further, such an analysis would take time and focus away from the initial purpose of this thesis which is to assess how Bill Clinton used executive orders as part of his foreign policy.

Structure of the Thesis

The thesis is divided into five chapters each assessing different aspects such as background information on executive orders and theoretical framework, assessment of Clinton's foreign policy, background on humanitarian interventions and a case study. All these different parts will provide the basis upon which to assess the thesis statement in the conclusion.

Chapter one provides a basis for discussion of the use of executive orders. Relying on the works of Philip J. Cooper, Kenneth R. Mayer, Adam L. Warber, and Andrew Rudalevige among others, this chapter will give an outline of what executive orders are, from where presidents derive their power to issue specific executive orders, and why they might choose to do so. Further the chapter gives an outline of the use of executive orders from the presidency of Franklin D. Roosevelt up until today. Finally possible controversies and criticism related to the use of executive orders are assessed.

Chapter two provides the necessary theoretical framework for the thesis in order to examine and make useful discussion on Clinton's foreign policy. This chapter, then, will provide an assessment of realism and idealism as a part of American foreign policy. These two foreign policy traditions introduce concepts such as American exceptionalism and the foreign policy strategies multilateralism and unilateralism. Thus as part of chapter two Clinton's foreign policy is assessed in relation to the foreign policy traditions and the strategies presented. The foreign policy concept "democratic enlargement" as presented by

historians Stephen E. Ambrose and Douglas G. Brinkley in their book, *Rise to Globalism*, will be introduced and further provide the basis for discussions in chapter three.¹⁵

Chapter three explores different aspects of Clinton's foreign policy. The first part examines President Bill Clinton's use of executive orders and how this was affected by the 1995 Republican takeover of Congress. The second part is built on a statement made by Ambrose and Brinkley arguing that Clinton's foreign policy was shaped by his advocacy of free trade, examining if this is evident in his use of executive orders. Finally the last section of this chapter further explores the definition of Clinton's foreign policy strategy "democratic enlargement" as presented in chapter two, and discusses where this strategy fits among the four schools of American foreign policy thinking, Hamiltonians, Wilsonians, Jacksonians, and Jeffersonians, as presented by Professor of Foreign Affairs, Walter Russell Mead.¹⁶

Chapter four provides an introduction to humanitarian interventions and examines how humanitarian interventions are treated in American history in the light of American exceptionalism, as presented in chapter two. Moreover, this chapter will assess some statements made by Professor of Strategy Jeffery Record, President of the Council of Foreign Relations, Richard N. Haass, and John Dumbrell in relation to the discussion on humanitarian interventions as wars of necessity or wars of choice.¹⁷

Chapter five is a case study of Clinton's involvement of American military forces in the humanitarian intervention in Kosovo. According to Walter Russell Mead, Clinton "waged war against Yugoslavia without the slightest shadow of a fig leaf of congressional consent" deploying American military forces in Kosovo through the issuance of executive orders.¹⁸ The chapter will provide an historical account of Clinton's policies towards the Balkans as a foundation for the study of the specific case of U.S. involvement in Kosovo. Further the chapter examines how Clinton by issuing executive orders authorized the use of American military forces to stop the massacres taking place. Finally this chapter examines the congressional and academic reaction which followed Clinton's use of power in relation to the Kosovo intervention.

¹⁵ Ambrose and Brinkley, 406

¹⁶ Ibid., 402; Walter Russell Mead, *Special Providence – American Foreign Policy and How it Changed the World*, (New York, NY: Routledge, 2002)

¹⁷ Richard N. Haass, *War of Necessity, War of Choice, A memoir of Two Iraq Wars*, (New York, NY: Simon & Schuster Paperbacks, 2009); Jeffrey Record, *Making War, Thinking History, Munich, Vietnam, and Presidential Uses of Force from Korea to Kosovo*, (Annapolis, Maryland: Naval Institute Press, 2002); Dumbrell, 2009, 80

¹⁸ Mead, 305

Executive Orders - “Presidential power tools”¹

The president of the United States has been granted numerous tools which can be used in order for the government to act and implement policies effectively. Policies and necessary action can be put into reality quickly without going through Congress. In the book *Executive Orders and the Modern Presidency: Legislation from the oval office* Adam L. Warber argues that “Presidents encounter time and resource limitations when pursuing their legislative initiatives in Congress. Executive orders are an efficient policy tool for overcoming the(se) restrictions,” which the president meet in Congress through its lengthy processes of revisions and voting, with the possibility of the policies being rejected.²

Article II of the U.S. Constitution vests the executive power in a president and grants him/her the position as Commander-in-Chief and the responsibility to “take care that laws be faithfully executed”³. However, scholars, including Andre Rudalevige argue that nowhere in the Constitution is the president granted the power to issue executive orders. Despite this, executive orders have to a varying degree been a recognized part of the presidency since George Washington. This thesis will focus on the use of executive orders in foreign policy during the presidency of William (Bill) J. Clinton. As a starting point this chapter will provide some background information on what executive orders are, how they are used, and from where presidents derive their authority to issue executive orders. This chapter is also meant to provide an overview of how presidents, from Franklin D. Roosevelt to the present, have used executive orders, and finally providing an assessment of why the use of executive orders might be seen as quite controversial.⁴

¹ Philip J. Cooper, *By Order of the President: the Use and Abuse of Executive Direct Action*, (Lawrence, Kansas: the University Press of Kansas, 2002), preface

² Ibid., 1-3; Adam L. Warber, *Executive orders and the modern presidency: Legislation from the oval office*, (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2006), 14

³ U.S. Constitution, Art. 2, sec. 3.

⁴ Andrew Rudalevige, “Opening the Black Box: How Unilateral Are Executive Orders?”, (Pennsylvania: Dickinson College, paper presented at APGAC, January 2011), 12; U.S. Constitution

1.1 What are executive orders?

There are numerous definitions and explanations for what executive orders really are, some one can argue contradict one another while others confirm each other. In a paper given at the *American Politics Group Annual Conference* in January 2011, Andrew Rudalevige provides what he argues to be a “widely-accepted” definition which was presented in a 1957 congressional study and later cited by the Congressional Research Service:

Executive orders and proclamations are directives or actions by the President. When they are founded on the authority of the President derived from the Constitution or statute, they may have the force and effect of law.... In the narrower sense Executive orders and proclamations are written documents denominated as such.... Executive orders are generally directed to, and govern actions by, Government officials and agencies. They usually affect private individuals only indirectly.⁵

In the book *By Order of the President – the use and abuse of executive direct action*, political scientist Philip J. Cooper defines executive orders as “directives issued by the president to officers of the executive branch, requiring them to take an action, stop a certain type of activity, alter policy, change management practices, or accept a delegation of authority under which they will henceforth be responsible for the implementation of law.”⁶ In its simplest form, executive orders are tools for the executive to implement policies without going through the lengthy process of achieving Congressional approval.⁷

Kenneth R. Mayer states in his book, *With the Stroke of a Pen – executive orders and presidential power*, that executive orders are considered to be an “indispensable policy and political tool” by presidents and their staffs.⁸ Due to the relative simplicity by which executive orders are developed it has become a widely used tool by presidents for implementing policies. By signing an executive order circumscribing Congress, the president escapes the risk of his or her policies being rejected by Congress. The implementation of an executive order requires no Congressional approval or review. The only statutory requirement when executive orders are signed is for them to be published in the Federal Register, which was created through the Federal Register Act of 1935. This was an attempt to put executive orders and proclamations into a system, making it easier for Congressional and public oversight as well as for those affected by one or several orders to keep track of changes and

⁵Rudalevige, 2011, 12

⁶ Cooper, 16

⁷ Ibid., 17

⁸ Kenneth R. Mayer, *With the Stroke of a Pen – executive orders and presidential power*, (Princeton and Oxford: Princeton University Press, 2001),7

amendments. Prior to this act, there were no requirements for systematizing the orders issued. It was not until the early years of the twentieth century efforts were made to start numbering executive orders by the State Department. However, due to poor record keeping in the early years of the Republic, many executive orders issued prior to the Federal Register Act of 1935, have been lost.⁹

The process of developing executive orders has been equally inconsistent and has changed throughout history, developing from being merely a note written by a president on a map or legal brief to what we see today with elaborate executive orders describing in detail what to be done and signed by the president. However, it was not until 1873 with President Ulysses S. Grant that serious efforts were made in order to establish some common guidelines for the issuance of executive orders. In 1962, President John F. Kennedy issued an executive order, Executive Order 11030, establishing a procedure for how executive orders were to be developed. The order has been amended by subsequent presidents numerous times, but the initial goal of the order persists, creating procedures for how to implement executive orders. In short, the procedures requires proposed executive orders, with origins outside of the White House, to be handed in to the director of the Office of Management and Budget (OMB) for approval. If approved, the proposal is handed over to the attorney general who considers the legality of the order, while the Office of the Federal Register needs to approve the form in order for the proposal to be handed over to the president for signature.¹⁰

1.2 Executive Orders and Executive Power

Cooper argues in his book that “in the most general sense, the primary use of executive orders is to make legally binding pronouncements.”¹¹ Mayer follows up on this statement when defining executive orders as “a form of ‘presidential legislation’ or ‘executive lawmaking’”¹². However, as previously stated nowhere in the constitution is it written that the president has the right to issue executive orders. It is therefore in most cases not self evident where the president derived his/her authority from when issuing executive orders. In order for E.O.s to be legally binding the president must state (expressly or implied) in the executive order the source from which he derives his authority to make such an issuance. Even though the president’s claimed authority is expressed through the order, the legal basis is only valid if the

⁹ Cooper, 18-19

¹⁰ Ibid., 17

¹¹ Ibid., 21

¹² Mayer, 35

source of the authority claimed is found valid.¹³

Executive orders and executive powers are inevitably tied together. Political scientist Louis Fisher argues in his book *Constitutional Conflicts between Congress and the President* that “executive orders are a source of law only when they draw upon the constitutional powers of the President or powers expressly delegated by Congress.”¹⁴ Mayer further claims that “since executive orders are a tool of the president’s executive power, their reach extends as far as executive power itself.”¹⁵ But rather than limiting the sources of executive power to what is written in the Constitution or delegated by Congress through statutes, Mayer adds yet another source of power in “the possibility that there exist inherent prerogative powers within the office.”¹⁶ Although the concept of inherent prerogative powers is seen as illegitimate by many scholars, it has been used by numerous presidents. Therefore, the following sections will assess inherent prerogative powers as source of authority together with the powers put forth by Fisher as constitutional and statutory powers.

1.2.1 Constitutional powers

Constitutional powers are powers that can be found written in the Constitution, vested in the executive, legislative or judicial branch by the Founding Fathers. As long as they stay within the limits of the powers granted, the respective branches can, theoretically, use these powers as they see fit, without protests from the other branches of government. Article II of the Constitution draws up the powers specifically granted to the executive. Among these enumerated powers granted to the president are the powers to make treaties, appoint ambassadors, Supreme Court judges, and Officers (with the advice and consent of the Congress). Since these powers are specifically stated in Article II of the Constitution there are few questions of presidents’ authority in the areas concerned. However, there is also a certain amount of ambiguity in Article II, which makes room for different interpretations of what presidents have the authority to do. Such ambiguity can be found in several sections of Article II. Section 1, for example, states that “the executive power shall be vested in a president” with no further specification of what is implied by this vestment.¹⁷ Further, section 2 reads that the president “shall be the Commander in Chief (...) and he shall have the power to grant

¹³ Cooper, 21-22; Mayer, 34-37; Rudalevige, 2011, 12

¹⁴ Louis Fisher, *Constitutional Conflicts between Congress and the President*, ed.5, (Lawrence, Kansas: University Press of Kansas, 2007), 109

¹⁵ Mayer, 36

¹⁶ Ibid., 36

¹⁷ U.S. Constitution, Art. 2, sec. 1 and 2.

reprieves and pardons”¹⁸. Since Article I, section 8 grants the power to declare war to Congress, it is not very clear what powers the president’s role as Commander in Chief inhibits. As one has witnessed time and again, especially since World War II, the ambiguity of this vestment has led presidents to reinterpret and take advantage of the vaguely defined powers granted to them.¹⁹

Finally, section 3 states that the president shall “take care that the laws be faithfully executed”²⁰. This part of the Constitution can be seen in direct connection to what Mayer refers to as “executive lawmaking”²¹. Due to the fact that the opening sentence of Article I states that “All legislative powers herein granted shall be vested in a Congress of the United States”²² it is not self-evident what the Founding Fathers meant by giving the responsibility to make sure that “the laws be faithfully executed” to the president.²³

1.2.2 Congressionally delegated powers

Set apart from constitutional powers the president is able to claim the authority to issue executive orders by referring to statutes. Statutes can be defined as “congressionally delegated powers” giving the president the power to make decisions in areas originally managed by Congress.²⁴ An example of such delegation of powers is the 1964 *Tonkin Gulf Resolution* which states “that the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.”²⁵ The power to deploy troops and order the use of military force in Asia were thus granted to President Lyndon B. Johnson, who needed no further authorization or declaration of war from Congress to conduct warfare in Vietnam.²⁶

The Tonkin Gulf Resolution passed Congress in the fall of 1964 despite the existence of a non-delegation doctrine. The non-delegation doctrine is (in theory) meant to prevent Congress from delegating its lawmaking powers to the other branches, and thus violating the Constitution. Fisher sites the British philosopher John Locke when explaining the theory

¹⁸ U.S. Constitution, Art. 2, sec. 1 and 2.

¹⁹ U.S. Constitution, Art. 2, sec. 1, 2, and 3.

²⁰ U.S. Constitution, Art. 2, sec. 3.

²¹ Mayer, 35

²² U.S. Constitution, Art. 1, sec. 1

²³ U.S. Constitution, Art. 1, 2, and 3

²⁴ Mayer, 44

²⁵ Andrew Rudalevige, *The New Imperial Presidency*, (Michigan: the University of Michigan Press, 2006), 77

²⁶ Louis Fisher, *Presidential War Powers*, 2nd revised edition., (Lawrence, Kansas: the University Press of Kansas, 2004), 129-132

behind this doctrine. Locke argued that the “legislature `cannot transfer the power of making laws to any other hands, for it being but a delegated power from the people, they who have it cannot pass it over to others.”²⁷ Fisher argues that despite these limits on congressional delegation power, Congress has transferred “substantial discretionary authority” to the executive in fields originally granted to Congress.²⁸

This practice of delegating powers through statutes was recognized as “constitutionally permissible” by the Supreme Court in 1928 in *Hampton & Co. v. United States*.²⁹ The Supreme Court created a judicial doctrine stating that delegation of power to the executive branch is recognized as valid “as long as Congress sets out an `intelligible principle’ to which the executive branch must adhere in carrying out the delegated powers.”³⁰ Recognizing this, Congress might issue major policies and, at the same time, allowing the executive to fill in the details of broad policy decisions. By doing this, Congress circumvent the problem of collective action inherent in the decision process at the same time as the blame for potentially unpopular/controversial policies is transferred to the executive.³¹

With the enactment of the Administrative Procedure Act (APA) in 1946 procedural requirements and standards were established to ensure that executive rulemaking is fair and equal, and to make congressional oversight possible. However, since the Courts seldom seem to strike legislative delegation by Congress, the “vague and general grants of legislative power” has provided presidents with broad authority to practice what Mayer refers to as “executive lawmaking,” often exceeding what Congress had in mind when transferring power to the executive.³²

1.2.3 Inherent powers

As a third source of executive power and thus a source from which presidents might draw authority to issue executive orders, Mayer emphasizes inherent executive powers. It is a fact that presidents have claimed and used powers by referring to inherent prerogative powers as president. These are powers that are not written in the Constitution or given to the presidency by Congress. Rather, the president bases authority on the mere fact that he is president. This is a controversial and much disputed source of power which can be said to contradict the “very

²⁷ Fisher, 2007, 85

²⁸ Ibid., 85

²⁹ Mayer, 44

³⁰ Ibid.

³¹ Ibid.; Fisher, 2007, 85-86

³² Mayer, 35, 45

purpose of a limited, written Constitution.”³³

Despite the fact that the concept of inherent executive powers is controversial and claimed by some to be non-existing, presidents have claimed that there do exist powers which are not written in the Constitution but nevertheless are inherent in the Office. The claim and use of such prerogative powers are particularly evident during national emergencies. For instance, during the Civil War President Lincoln saw the need to order several measures to be taken in an attempt to reestablish order in the South. Without the authority in the Constitution or statute from Congress he suspended habeas corpus, censored mail, and “expended government funds in the absence of any congressional appropriation”.³⁴

A second president who is famous for his claim to wide executive powers is Theodore Roosevelt. He claimed that it was his duty as President “to do anything that the need of the nation demanded unless such action was forbidden by the Constitution or by its laws.”³⁵ This has become the basis of what is known as the “stewardship theory,” with Roosevelt as its front figure. Roosevelt was one of the first presidents to use executive orders in an extensive manner, issuing 1,091 orders during his two periods as president. Almost as many as all the executive orders issued by the presidents preceding him, combined (1,259).³⁶

In the late nineteenth century and the early twentieth century one saw an increase in the use of executive orders. Since most orders in the two foregoing centuries “involved routine administrative procedures,” Mayer argues that parallels can be drawn between the expanding use of executive orders, the shaping of government institutions, and the expansion of state administrative capacity.”³⁷ The majority of executive orders issued in the late nineteenth century were mainly administrative in nature dealing with the civil services and administration of public lands.³⁸

1.3 How and Why Executive Orders Are Used

There are several reasons for a president to use executive orders as a way to implement policies. One reason is the efficiency of this policy tool compared to other channels available for implementation of policies. Cooper states that “executive orders are often used because

³³ Ibid., 36, 50

³⁴ Ibid., 50, 52; Joseph A. Pika and John Anthony Maltese, *The Politics of the Presidency*, (Washington D. C.: CQ Press, 2010), 13-15

³⁵ Mayer, 51

³⁶ Ibid.; Pika and Maltese, 21-22

³⁷ Mayer, 51

³⁸ Ibid.

they are quick, convenient, and relatively easy mechanisms for moving significant policy initiatives.”³⁹ He claims that by issuing executive orders the president and the administration avoid the cumbersome and lengthy legislative process, seeing that executive orders are “the only instrument that presidents possess that is essentially independent from statutory, legislative and judicial oversight.”⁴⁰ In addition, by issuing executive orders the president is able to bypass administrative procedures required by the Administrative Procedure Act (particularly the rulemaking process) which can be a just as protracted process as the legislative.⁴¹

As cited by political scientists George A. Krause and David B. Cohen in their research article *Presidential Use of Executive Orders, 1953-1994*, Professor of Public Service Paul C. Light claims that there are several reasons for a president to choose the administrative route over the legislative when attempting to shape policies. Light argues that:

“the president may issue an executive order when an administrative action is the logical alternative [as compared to legislative action], when it is the simplest and most direct route. He may issue one in order to prevent a given program’s being involved in congressional controversy. He may use it when the risk of congressional defeat is too great. Finally, the President may issue an executive order after testing the congressional path and finding failure.”⁴²

In light of this, Krause and Cohen reason that the use of executive orders give presidents an opportunity to pursue their policy goals strategically, and in efficient and alternative ways. It also prevents the president from being perceived “as a weak and ineffectual leader,” which might be the result if the legislative route is chosen and turns out to be unsuccessful. However, adding to this view they conclude that contrary to earlier research on the subject executive orders are used more frequently when the president experienced success in the legislative arena. This supports the argument that executive orders can play a role of strengthening congressional action in areas where the president’s opinion coincided with that of the Congress, and as a temporary solution that will require further legislative action.⁴³

After President Franklin D. Roosevelt’s first period in Office, assessing a president’s ability to implement policies during the first few months in office has become a way of

³⁹ Cooper, 58

⁴⁰ George A. Krause and David B. Cohen, “Presidential Use of Executive Orders, 1953-1994” in *American Politics Research*, vol.25 (1997): 458-481, online via Sage publications, <<http://apr.sagepub.com>>, (22 November 2011), 460

⁴¹ Cooper, 58; Warber, 14-15

⁴² Krause and Cohen, 462

⁴³ Ibid.

judging presidents and their perceived strength and efficiency. With the nation witnessing a tremendous amount of new policies and programs being implemented within the first hundred days of his presidency, there has developed a custom of people expecting the president to start work swiftly after the inauguration. Consequently, some scholars have argued that there seems to be a tendency for newly inaugurated presidents to rely more on executive orders at the beginning of the period, “‘hitting the ground running’” implementing new and often controversial policies efficiently by issuing executive orders.⁴⁴ However, Krause’s and Cohen’s research found that this is most likely not the case, as they did not find there to be a decrease in the use of executive order during the tenure.⁴⁵

Other reasons for a president to choose executive orders over other policy tools might be image building or the preservation of one’s current image. By opening the signing of executive orders for the media, creating publicity around an event which is usually conducted in silence, presidents might be able to arouse attention not only for the purpose of the order but for the purpose of showing the public the president’s willingness to act in a certain field. President Clinton conducted several public signings; the first (concerning ethics, “calling for the elimination of one hundred thousand public service positions”⁴⁶) was conducted even before leaving Capitol Hill after his inauguration. John F. Kennedy issued executive orders in order to put a halt on numerous labor disputes and strikes during his presidency. The main purpose was to address private disputes which might have had a negative effect on the entire nation. By issuing an executive order, Kennedy was able to take action to stop a strike, without placing himself in the middle of the conflict. However, a side effect of issuing executive orders in such cases is the opportunity it creates for the president of building an image as a strong leader who takes action and responds to the public’s needs. More recently President Barack Obama issued Executive Order 13492 ordering for “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities,” on his inauguration day.⁴⁷ This was an important order for Obama in stipulating a new course in American foreign affairs, away from the course held by President George W. Bush. However, this executive order appears to carry little weight since nothing suggests that the naval base in Guantanamo Bay will be closed any time soon.

The use of tools of presidential direct action such as executive orders is in some

⁴⁴ Ibid., 273

⁴⁵ Ibid.

⁴⁶ Cooper, 48

⁴⁷ Ibid., 43-44; Barack Obama, “Review and Disposition of Individuals Detained at Guantanamo Bay Naval Base and Close of Detention Facilities,” Executive Order, 22 January 2008, <<http://edocket.access.gpo.gov/2009/pdf/E9-1893.pdf>>, (11 January 2012)

instances quite controversial. However, there are situations where rapid action is required, such as in the case of national emergencies. In such instances presidents' use of executive order seem to be more accepted than in less critical situations. By using executive orders, presidents can (and have) declare(d) a state of national emergency in the advent of war, terrorist attacks, or natural disasters. By issuing a decree of national emergency the president acquire an immense range of powers which according to Mayer includes powers that to a large degree can and will influence the lives of ordinary Americans. Mayer further argues that in the case of a declared emergency the president can claim "unilateral warrants including - theoretically - the power to restrict travel, impose martial law, and seize property, transportation networks, and communications facilities."⁴⁸

1.4 The Use of Executive Orders, from FDR until Present

There are certain challenges tied to the study of executive orders. The main challenge is arguably the availability of executive orders in public archives, or put more precisely the restrictions on executive orders made available through the national archives. Executive orders are withheld from the public for different reasons, one being the nature of a said executive order. Executive orders related to national security are for exactly the purpose of the national security exempt from the public, thus not available for review.⁴⁹

In addition, there is as mentioned previously a problem of general availability, which is especially present with regards to executive orders issued prior to 1862. For the purpose of this thesis, there is a problem of practical availability. Through the National Archives' online site one can access the Federal Registry where disposition tables of executive orders are available with information of executive orders issued from 8 January 1937 up until quite recently. Thus executive orders from the first four years of FDR's presidency are not listed in the National Archives' online site at all. Information available through the disposition tables is also limited for presidents prior to 1993. From what is listed one can get information regarding the executive order number, the date of signing by the President, *Federal Register* volume, page number, and issue date, the title of the executive order, amendments (if any), and current status (where applicable). With the exception of some executive orders regarded as especially significant (made available through the government online site *OurDocuments.gov*), executive orders by only the last few presidents, Bill Clinton, George

⁴⁸ Mayer, 6; Cooper 39-42

⁴⁹ Cooper, 18-19

W. Bush and Barack Obama are available in full text through the *Federal Register*. For practical reasons, then, and due to the limited scope of this thesis this section is meant to give an overview of the use of executive orders by presidents from Franklin D. Roosevelt up until the present.⁵⁰

No president has taken advantage of the possibilities of executive direct action to the same extent as Franklin D. Roosevelt. All together he issued 3,728 executive orders during his presidency. When comparing the overall use of executive orders among different presidents, one should take into consideration the fact that FDR held the office for 12 years while those preceding him had an average tenure in the Oval Office of less than six years. The number of years in office set aside, FDR outnumbered most presidents by issuing 573 executive orders in his first year in office alone, and further issuing an average of over 310 executive orders each year the twelve years he held the Office.⁵¹

In addition to FDR's uniquely long presidency, one should also keep in mind that his presidency was marked by two severe but quite different emergencies with one emergency replacing the other as the Great Depression appeared to have come to an end as the nation was preparing for war. As the Great Depression is an example of, natural and military emergencies are not the only incidents which might lead to a declaration of national emergency. The economic crisis of the 1930s led FDR to declare a national emergency in 1933, which was not revoked until 45 years later. In instances of national emergencies, rapid action is required, thus executive orders become a convenient tool for the president in order to respond to the perceived needs of the nation. During the first few years of his presidency FDR issued executive orders with the goal of bringing the nation back on track after years of devastating depression. By using executive orders, he established several agencies for the creation and administration of jobs for American citizens, i.e. the National Labor Board and the Civil Works Administration, both established in 1933. Many of the executive orders that were issued during the 1930s dealt to a large degree with the transfer of jurisdictions over land and the withdrawal of public lands for the purpose of creating national reserves, maintaining and constructing roads and railways. In addition FDR issued a large number of executive orders concerned with exempting key personnel from "compulsory retirement of age," and civil service regulations.⁵²

⁵⁰ "Executive Orders Disposition Tables Index", *Federal Register*, <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (28 November 2011)

⁵¹ Ibid.

⁵² Ibid.; "Chronology: the Making of the New Deal", *The Real Deal*, University of Virginia, 2002, <http://xroads.virginia.edu/~ma02/volpe/newdeal/timeline_text.html>, (28 November 2011)

The general pattern of FDR's first six years in office was a reliance on executive orders for internal and administrative purposes, developing what is referred to by scholars as the administrative presidency. Only two weeks after the Second World War reached American territory, the powers of the presidency were increased with FDR signing the First War Powers Act on 18 December 1941. The scope of the powers granted to the president was further increased with the issuance of the Second War Powers Act in 1942, only three months after the first was signed. The broad grants of emergency powers to the executive branch led FDR to issue nearly three hundred executive orders in relations to the war and creating more than fifty new agencies. Through the use of executive orders Roosevelt expanded the independent authority of the presidency far beyond what was granted to the executive branch in the Constitution, referring to the authority granted to him through the First and Second War Powers Acts.⁵³

President Harry S. Truman entered the Office in 1945, succeeding President Franklin D. Roosevelt who died of a cerebral hemorrhage in April the same year. As the Second World War was drawing to an end, the need for strong executive action was declining. This one can argue is also evident in the number of executive orders issued during 1945, as compared to the period from 1939 to 1942 with an average of 317 executive orders issued each year. By contrast only 168 executive orders were issued in 1945, 29 by FDR, and 139 by Truman. However, even though the war had officially ended the number of executive orders issued increased in the period after 1945. Some of this increase can be explained by the fact that Truman was managing the demobilization of the nation and removing many of the wartime orders issued by FDR through the issuance of new executive orders. Moreover, parts of the decrease in the issuance of executive orders during the last few years of the Second World War can be explained as a result of broad blanket orders were allowed and certain policy areas being made open for subdelegation by the president, in 1942. In order to be able to focus on policies dealing with the wartime situation FDR delegated authority over public lands to the secretary of the interior. Such delegation of powers was made more permanent by Truman in 1952 under the Presidential Subdelegation Act.⁵⁴

Even though the average of executive orders issued every year fell sharply towards the end of the Second World War, there were shorter periods after the war where the number of executive orders was spiking. This was also evident during Truman's presidency. As the

⁵³ Mayer, 70-74; Rudalevige, 2005, 48; Fisher, 2004, 75-80

⁵⁴ Mayer, 74 - 76; "Executive Orders Disposition Tables Index", *Federal Register*, <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (28 November 2011)

United States became involved in the Korean War in 1950, America was again mobilizing for war and the use of executive orders increased. The difference compared to the Second World War effort is that nation was not under attack, and the war was to a larger degree entered into as a matter of choice. Deriving his authority to issue wartime orders from the Defense Production Act of 1950, Truman was granted authority to “implement economic controls,” although not as wide powers as those granted to Roosevelt during the Second World War.⁵⁵

In Office, Truman was continuing Roosevelt’s engagement in labor disputes. He ordered the seizing of coal mines, manufacturing plants, railroads, and other transportation companies threatening to shut down due to worker strikes. In the book *The Enduring Vision: A History of the American People*, Paul S. Boyer et al describes a post- World War period where Truman had to face an explosion in labor disputes and worker walkouts in the industries. Prices were increasing but workers’ wages remained the same. The end of the war meant the end of war time bonuses and demobilization lead to a decline in overtime work. These factors, together with the inflation were threatening workers who saw their income decreasing while prices were increasing. During 1946, members of the United Mine Workers went on strike on several occasions; as the American economy became paralyzed time and again by the worker walkouts, Truman saw no other option than to order seizure of the mines and granting most of the demands in order to get the workers back to work. Although criticized from both left and right, Truman repeatedly intervened in labor disputes throughout his presidency by issuing executive orders. The interventions eventually culminated with the issuance of Executive Order 10304 *Directing the Secretary of Commerce To Take Possession of and Operate the Plants and Facilities of Certain Steel Companies* leading up to *The Steel Seizure Case* and the *Youngstown concurrence* in 1952, which will be assessed later in this chapter.⁵⁶ Truman based his authority to involve in private business disputes on the “assertion that the president had virtually unlimited authority to act in emergencies.”⁵⁷

The issuance of executive orders in order to deal with labor disputes can be found in the records of several presidents and have been used as a tool to help solve various labor disputes in private business which might have severe consequences for the wellbeing of the nation. Arguably more than any other president, President John F. Kennedy issued executive orders to put a halt on labor disputes in private corporations. Kennedy used over thirty (out of

⁵⁵ Mayer, 76

⁵⁶ “Executive Orders Disposition Tables Index”, *Federal Register*, <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (18 April 2012)

⁵⁷ Mayer, 54; Paul S. Boyer et al., *The Enduring Vision: A History of the American People* - concise second edition (Lexington, Mass.: D.C. Heath and Company, 1995), 610

a total of 214) executive orders dealing with labor disputes in companies such as Pan American World Airways, Inc, Florida East Coast Railway Company, United Air Lines, Inc, among others, during his three years as president. These are all companies that if taken into strike would have caused severe problems for Americans and in the worst case for the entire nation and the national security. To prevent this from happening, Kennedy issued several orders dealing with the labor disputes ordering investigations and reports on the issues.⁵⁸

Even though Kennedy issued more executive orders (relatively speaking) dealing with labor disputes than any other president during his presidency, probably the best known executive order issued in this field is Truman's Executive Order 10340. The issuance of this specific order did not only have consequences at the time, but resulted in new restrictions with regards to presidential powers. As collective bargaining broke down and steelworkers were calling for strike at the end of December 1951, Truman acted in what is best known as the "Steel Seizure Case."⁵⁹ Cooper argues that in this specific case, Truman "used executive orders not only to address the effects of the strikes but also as a tool to pressure management and labor to settle."⁶⁰ As the Federal Mediation and Conciliation Service failed to lead the parties to an agreement, Truman called on the Federal Wage Stabilization Board. As the board's investigation and recommendations led nowhere and treats of a nation-wide strike was hanging over him, Truman ordered the Secretary of Commerce to confiscate and take control over the steel mills. Truman reasoned that the seizures were a matter of national security, due to the national defense's reliance on steel production as American Forces was fighting in Korea. Due to the possibility of a national emergency the executive order was not based on any statutory authority the way FDR's property seizures during WWII had been. Rather, Truman derived his authority to seize the mills on "powers vested in the President by the Constitution and laws of the U.S. and as the President of the U.S. and Commander in Chief of the Armed Forces."⁶¹

However, by ordering the seizure of the steel mills President Truman acted far beyond the powers vested in the presidency. He chose not to use the available tools enacted by Congress, such as the 1947 Taft-Hartley Act. This led to the steel companies suing the

⁵⁸ "Executive Orders Disposition Tables Index", *Federal Register*, <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (14 December 2011); Cooper, 43-44

⁵⁹ John Contrubis, "CRS Report for Congress – Executive Orders and Proclamations" *Law Librarians' Society of Washington, D.C.*, 9 March 1999, <<http://www.llsdc.org/attachments/wysiwyg/544/crs-95-772.pdf>>, (29 November 2011), 5

⁶⁰ Cooper, 41

⁶¹ Contrubis, 5; William J. Olson and Alan Woll, "Executive Orders and National Emergencies, How Presidents Have Come to 'Run the Country' by Usurping Legislative Power," *Policy Analysis*, no 358, 28 October 1999, <<http://www.cato.org/pubs/pas/pa358.pdf>>, (12 December 2011), 17

Secretary of Commerce, which in turn ended with what Mayer refers to as “the twentieth century’s most important judicial statement on the limits of presidential power,” the famous Supreme Court case *Youngstown Sheet & Tube Co. v. Sawyer* (also referred to as “Youngstown”).⁶² The Court found the president to have no such authority to order the seizure of property and companies without the consent of Congress. Supreme Court Justice Robert Jackson’s opinion is probably the most famous of the opinions from *Youngstown*, and his concurrence set forth an analysis with three groups of presidential power, which have developed into a standard by which the courts evaluate and test executive orders and their legitimacy.⁶³

Starting with the Republican Dwight D. Eisenhower taking office in 1953 and continuing to the present, there has been a very clear decrease in the number of executive orders issued. As Eisenhower assumed the office, the average of executive orders issued each year was cut to a third of the average annual number between 1936 and 1952. While the average during FDR and Truman was 186 executive orders per year, the average since Eisenhower took Office in 1953 has been 60 orders per year. This can in part be explained by factors such as the end of emergency after the Second World War. Further, the enactment of the Presidential Subdelegation Act which authorized the President to transfer authority to manage the civil services and public lands to other departments led to a direct decrease in Executive Orders issued. A third, less measurable factor explaining the decrease in Executive Orders is the respective presidents’ personal inclination to use executive powers. Eisenhower for instance, was a president who quite reluctantly used executive orders as a tool to govern the country.⁶⁴

Mayer argues that there are “few areas in which executive orders have played a more significant role in effecting dramatic and widespread policies” than in the field of civil rights.⁶⁵ Civil rights legislation has been viewed as a difficult and quite controversial field by policy makers and has met a lot of resistance in Congress as well as in the American public. Executive orders have become a common tool when it comes to the implementation various controversial policies for different reasons. One reason for a president to use executive orders in such instances is that it might be difficult to get important but controversial legislation through the diverse assembly that Congress is, with its collective processes, which might end up undermining the entire proposal. A second reason for the preference of presidential direct

⁶² Mayer, 6

⁶³ Contrubis, 5-7; Cooper, 36-37

⁶⁴ Mayer, 69-71, 76

⁶⁵ Ibid., 184

action rather than taking a bill through Congress is the possibility for Congress of directing the responsibility for a certain policy away from Congress towards the President. Through executive orders the final decisions over policies are left to the President to make, thus if the policies meet opposition in the public and/or fails to reach the intended goal(s) of the policies, the blame is directed at the President rather than the members of Congress.⁶⁶

Civil rights were a field where the presidency had a key role when it came to implementing policies promoting racial equality, from FDR lasting up until the mid-1960s with the passage of the *Civil Rights Act* of 1964 and the *1965 Voting Rights Act*. The presidents of this period have all had an impact on Civil Rights legislation during their respective presidencies with Congress tending to act only after the president had issued one or several executive orders in the field. However, as FDR's executive order permitting the internment of Japanese people in the U.S., arguably violating their civil rights shows that even though there has been a reliance on presidents to implement civil rights policies through the issuance of executive orders it does not necessarily mean that the presidents personally have had special interest in or desire to make society equal and just for all. Rather, it might also be that they have responded to political pressure from within the government and/or from demands from outside (i.e. from interest groups/organizations). As a matter of fact, both FDR and Eisenhower were quite reluctant to issue any kind of policy dealing with desegregation, racial justice and equality in the early years of their presidencies.⁶⁷

However, even though Eisenhower sought to limit the scope of the federal administration, he stated in his first State of the Union Address (1953) that he was committed to use “whatever authority exist(ed) in the office of the president” in order to “end segregation in Washington, D.C., in federal government employment, and in the military.” Specifically emphasizing that “he would work to end discrimination in those areas under federal jurisdiction,” Eisenhower held a quite restrictive view of what powers existed in the office of the president.⁶⁸ Despite his restrictive view of executive powers, there were occasions where Eisenhower saw the need to use them. Mayer states that “the most significant executive action” taken by Eisenhower during his presidency was Executive Order 10730, which as the title of the order states was “Providing Assistance for the Removal of an

⁶⁶ Ibid., 182-185

⁶⁷ Ibid.

⁶⁸ Ibid., 193

Obstruction of Justice Within the State of Arkansas.”⁶⁹ With the people of Little Rock and even the school’s principal obstructing justice by denying black students enrollment in the school, President Eisenhower reasoned reluctantly that people in Little Rock were denying “the equal protection of the laws secured by the Constitution of the United States.”⁷⁰ Eisenhower claimed his authority as Commander in Chief and by the powers given to the presidency by statutory provisions to federalize the Arkansas National Guard, in order to enforce the orders of desegregation, splitting up the protesters and protecting black students as they were entering Little Rock Central High School.⁷¹

Moving in to the 1960s, Kennedy’s presidency was marked by a relatively high number of orders dealing with labor disputes and an engagement in civil rights issues. Moreover, Kennedy issued several administrative executive orders dealing with the Cold War situation and emergency preparedness of government department and agencies. As mentioned earlier Kennedy issued Executive Order 11030 providing the first formal procedures for the “Preparation, presentation, filing, and publication of Executive Orders and Proclamations”.⁷² This technical order was meant to give an outline of what form orders should take and procedures for how the legitimacy are to be checked and approved, and by whom they are being checked and approved.⁷³

With Kennedy’s assassination in November 1963, Lyndon B. Johnson was thrown into the presidency. As he took office LBJ followed the pattern seen after the termination of the Second World War. With a total of 324 executive orders issued during his seven years as president, he issued a quite modest number of executive orders compared to previous presidents. Not surprisingly, the first few months of LBJ’s presidency was marked by executive orders issued to deal with the assassination of Kennedy. These were orders such as Executive Order 11130, *Appointing a commission to report upon the assassination of President John F. Kennedy*, and Executive Order 11129, *Designating certain facilities of the National Aeronautics and Space Administration and of the Department of Defense, in the*

⁶⁹ Ibid., 194; Dwight D. Eisenhower, “Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas”, Executive Order, 24 September 1957, <http://www.ourdocuments.gov/doc_large_image.php?doc=89;> (5 December 2011)

⁷⁰ Eisenhower, 1957

⁷¹ Mayer, 194

⁷² John F. Kennedy, “Preparation, presentation, filing, and publication of Executive Orders and Proclamations”, Executive Order, 21 June 1962, <<http://www.archives.gov/federal-register/codification/executive-order/11030.html>>, (6 December 2011)

⁷³ Mayer, 60

*State of Florida, as the John F. Kennedy Space Center.*⁷⁴ The following years was marked by Johnson's continued engagement in Kennedy's Civil Rights legacy through the issuance of Executive Order 11246, *Equal Employment Opportunity*, and Executive Order 11247 *Providing for the coordination by the Attorney General of enforcement of Title VI of the Civil Rights Act of 1964.*⁷⁵ However, one of LBJ's most controversial executive orders came with the issuance of Executive Order 11216. Using his power as Commander in Chief, Johnson ordered the "Designation of Vietnam and waters adjacent thereto as a combat zone for the purposes of section 112 of the Internal Revenue Code of 1954," initially recognizing U.S. involvement in the hostilities in Indochina, further spurring the hostilities which came to be known as the Vietnam War.⁷⁶

The Vietnam War carried on into the 1970s and the presidency of Richard Nixon. However, despite the fact that the U.S. was involved in a large scale war in Asia, the number of executive orders issued by President Richard Nixon in the period 1969 – 1974 was relatively low compared to the number of orders issued by other presidents at war such as FDR and Truman. Nixon issued an average of just under 58 executive orders each year during his presidency. Like Johnson, Nixon issued several orders dealing with military preparedness and military personnel. In addition to this, one saw a further continuation into Nixon's presidency of executive orders dealing with the classification of information for the purpose of national security.⁷⁷

Information control became an issue of presidential concern during World War I. President Woodrow Wilson had sought to control the distribution of information by creating a censorship panel through the issuance of Executive Order 2954 in April 1917. FDR further extended the presidential control over the classification process through several executive orders during the war years, creating organizations such as the Office of Censorship (E.O.

⁷⁴ Lyndon B. Johnson, "Appointing a commission to report upon the assassination of President John F. Kennedy", Executive Order, 29 November 1963, <<http://www.archives.gov/federal-register/executive-orders/1963-johnson.html>>, (9 December 2011); Lyndon B. Johnson, "Designating certain facilities of the National Aeronautics and Space Administration and of the Department of Defense, in the State of Florida, as the John F. Kennedy Space Center," Executive Order, 29 November 1963, <<http://www.archives.gov/federal-register/executive-orders/1963-johnson.html>>, (9 December 2011)

⁷⁵ Lyndon B. Johnson, "Equal Employment Opportunity", Executive Order, 24 September 1965, <<http://www.archives.gov/federal-register/executive-orders/1965.html>>, (9 December 2011) ; Lyndon B. Johnson, "Providing for the coordination by the Attorney General of enforcement of Title VI of the Civil Rights Act of 1964", Executive Order, 24 September 1965, <<http://www.archives.gov/federal-register/executive-orders/1965.html>>, (9 December 2011)

⁷⁶ Lyndon B. Johnson, "Designation of Vietnam and waters adjacent thereto as a combat zone for the purposes of section 112 of the Internal Revenue Code of 1954", Executive Orders, 25 April 1965, <<http://www.archives.gov/federal-register/executive-orders/1965.html>>, (9 December 2011)

⁷⁷ Mayer, 146

8985, 1941) and later gathering all the information functions held by the government in one organization, the Office of War Information (E.O. 9182, 1942). This practice of government/presidential control over the classification of information was carried over to Truman's presidency. With fears of espionage rising and subversion as the Cold War climate was settling, Truman "completely overhauled the security classification program" through Executive Order 10104 (February 1, 1950) and Executive Order 10290 (September 24, 1951).⁷⁸ The orders replaced a system of "widely varying sets of regulations" with a centralized system ultimately controlled from the White House."⁷⁹ Truman's Executive Order 10290 was criticized for being too broad and loosely administered, and as Attorney General Herbert Brownell argued in 1953, making it "possible for government officials to cover up their own mistakes and even their wrongdoing under the guise of protecting national security."⁸⁰ Thus as Eisenhower entered the presidency, he issued Executive Order 10501 reestablishing the much narrower "national defense" principle, reducing the number of classification levels and the number of agencies authorized to classify information along with new procedure for the declassification of documents.⁸¹

Up until 1972, with the exception of some minor amendments few changes were made to Eisenhower's order (E.O. 10501). With Nixon's Executive Order 11652, however, efforts were made in order to create more openness in government. However, scholars at the time, such as historian Arthur Schlesinger, argued that the broadened definition of what information subject to classification, from "national defense" to "national defense or foreign relations" created a far too vague and "spacious" standard. Rather than creating openness, the order was created to control leaks by "restrict(ing) access to classified information, and bring(ing) diplomatic and foreign affairs information under the umbrella of the classification system."⁸²

The reliance on executive orders to regulate the classification process is evident when assessing the issuance of executive orders on the subject throughout the twentieth century. Due to Watergate, Carter sought to increase the openness in government through an executive order on classification (E.O. 12065 July 3, 1978), just to be abandoned by Ronald Reagan's executive order, reversing the trend of more openness in government (E.O. 12356, April 6, 1982). Replacing Reagan's classification order, Bill Clinton in turn issued Executive Order

⁷⁸ Mayer, 145

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid., 144-145

⁸² Ibid., 146; Richard Nixon, "Classification and declassification of national security information and material," Executive Order, 8 March 1972, < <http://www.archives.gov/federal-register/executive-orders/1972.html>>, (12 December 2011)

12958, emphasizing declassification and tightening the scope of what information might be subject to classification.⁸³

As information classification has been subject to control and regulation through executive orders, the American intelligence community with agencies such as CIA has also been subject to presidential control and regulations through executive orders. As Gerald R. Ford entered the presidency after Nixon's resignation, a fair share of the executive orders issued were a part of the demobilization of the military after the Vietnam War officially ended in 1975. In addition to these, President Ford used executive orders to administer and reform the intelligence community. One example of such an order is Executive Order 11905 of February 18, 1976 regarding "United States Foreign Intelligence Activities," for the purpose of establishing policies to "improve the quality of intelligence [...] to clarify authority and responsibilities [...] and to establish effective oversight to assure compliance with law [...]."⁸⁴ But Ford's probably most controversial and possibly most devastating use of presidential direct action was not issued through an executive order, rather one can argue that the issuance of a presidential proclamation pardoning Richard Nixon, only one month after Nixon's resignation would, in effect, prove to be devastating for Ford's credibility as president.⁸⁵

Scholars such as Andrew Rudalevige have argued that towards the end of the twentieth century one could once again find the tendency of sitting presidents, such as Reagan, Bush sr., Clinton and Bush jr., claiming more powers to the executive, expanding the executive branch in scope and power, towards what Rudalevige referred to as *the New Imperial Presidency* (in his book by the same name), further developing what historian Arthur Schlesinger labeled *The Imperial Presidency* in his book by the same name in 1973.⁸⁶ This increasing use of and claim to power in the last two decades of the twentieth century continuing into the twenty first century, one would assume to be accompanied by increasing numbers of executive orders. However, by looking at the number of executive orders published in the *National Archives* the last thirty years one discovers that the average number of executive orders issued by the last five presidents have decreased, from an average of 80 executive orders issued each year during Carter's presidency to an average of just under 35

⁸³ Mayer, 147-148

⁸⁴ Gerald R. Ford, "United States Foreign Intelligence Activities," Executive Order, 18 February 1976, <<http://www.ford.utexas.edu/library/speeches/760110e.htm>> (13 December 2011)

⁸⁵ Gerald R. Ford, "Granting a Pardon to Richard Nixon," Presidential Proclamation 4311, 8 September 1974, <<http://www.ford.utexas.edu/library/speeches/740061.htm>> (13 December 2011)

⁸⁶ Arthur Schlesinger, *The Imperial Presidency* (New York: Houghton Mifflin Company, 1973); Andrew Rudalevige, *The New Imperial Presidency*, (Michigan: The University of Michigan Press, 2005)

executive orders issued each year by President Obama. Cooper explains this decrease in executive orders, by arguing that “recent administrations, particularly those of George Bush, Bill Clinton and George W. Bush have intended to increase significantly the use of presidential memoranda and to use them interchangeably with executive orders or even side by side with executive orders on the same topic.”⁸⁷ He goes on to argue that presidents making public statements even have problems separating the one from the other. In addition there has been an increasing reliance on National Security Directives, which in most instances are not made public for exactly the purpose of the national security. Thus, one can argue that the use of executive orders has declined during the past 30 years, however, the presidential use of power “tools” of presidential direct action prevails.⁸⁸

1.5 Controversy and Criticism

Executive orders to implement policies are widely accepted as a tool of presidential direct action. As stated at the beginning of this chapter, the Founding Fathers did not assign the President the power to issue executive orders in the Constitution. Executive orders are accepted by politicians and among scholars, but are still controversial as a presidential “power tool.”⁸⁹ When assessing the nature of executive orders issued we discover that there are numerous ways in which executive orders go against the initial principles and purposes of the Constitution. More specifically according to Andrew Rudalevige, the mere existence, how, and the reasons why they are applied contradict the constitutional principle of separation of powers as well as the principle of democracy and rule by the people.⁹⁰

President Franklin D. Roosevelt’s use of executive powers through executive orders has been perceived by scholars as crossing the limits of the legitimate authority by a wide margin. Mayer argues that of the vast amount of agencies created during the war, in relations to economic policy and control, only one agency was created with “explicit Congressional authorization,” the Office of Price Administration.⁹¹ The rest of the agencies were created by FDR through executive orders, relying exclusively on executive and emergency powers. This reliance on executive powers in conducting the American war effort made even FDR’s own

⁸⁷ Cooper, 13

⁸⁸ Ibid., 13-14; “Executive Orders Disposition Tables Index”, *Federal Register*,
<<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (14 December 2011)

⁸⁹ Cooper, preface

⁹⁰ Rudalevige, 2011, 12

⁹¹ Mayer, 74

administration worry that they were pushing the limits of what the executive could legally do, spurring the growth and development of the executive branch towards what Arthur Schlesinger and later Andrew Rudalevige argue culminated in the “imperial presidency”.⁹²

As the definition presented at the beginning of this chapter explains, executive orders are usually directed at government agencies and officials, with only a limited, indirect effect on the lives of private individuals. FDR’s executive orders were mainly of such an administrative character, creating agencies and administering land, which one can argue had only indirect influence on the lives of private citizens. However, that does not mean that there have not been executive orders issued which did not have severe consequences for the lives of those who “indirectly” were affected by an order. One of the most significant and arguably the most controversial of FDR’s executive orders is Executive Order 9066. Signed February 19, 1942, the order was “Authorizing the Secretary of War To Prescribe Military Areas.”⁹³ This specific executive order had serious consequences for the lives of Americans of Japanese decent and Japanese immigrants. The order was meant to protect the U.S. “against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities” and at the same time protect persons of Japanese ancestry from the danger of anti-Japanese sentiments after the Japanese attack on Pearl Harbor.⁹⁴ Thus Roosevelt authorized the Secretary of War “to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded.”⁹⁵ The consequences of this grant of authority to the Secretary of War were the internment of 117, 000 persons of Japanese ancestry, removing them from their homes, confiscating their land and placing them in guarded camps. The contradiction in Roosevelt’s stated intentions behind the executive order can be exemplified by a Japanese internee’s comment on the frustrating situation: “If we were put there for our protection, why were the guns at the guard towers pointed inward, instead of outward?”⁹⁶

⁹² Mayer, 71 – 74; Schlesinger, 1973; Rudalevige, 2005

⁹³ Franklin D. Roosevelt, “Authorizing the Secretary of War to Prescribe Military Areas”, Executive Order, 19 February 1942, <<http://www.archives.gov/federal-register/executive-orders/1942.html>> (28 November 2011)

⁹⁴ Franklin D. Roosevelt, “Transcript of Executive Order 9066: Resulting in the Relocation of Japanese (1942)”, Executive Order, 25 February 1942, *National Archives – Our Documents*, <<http://www.ourdocuments.gov/doc.php?flash=true&doc=74&page=transcript>>, (28 November 2011)

⁹⁵ Ibid.

⁹⁶ Rudalevige, 2011, 12; “Teaching With Documents: Documents and Photographs Related to Japanese Relocation During World War II”, *National Archives*, <<http://www.archives.gov/education/lessons/japanese-relocation/>> (28 November 2011)

1.5.1 The issue of separation of powers

Scholars argues again and again that one of the most serious problems of the presidential use of executive orders is the usurpation of power which can be related to the use of executive orders. As both Mayer and Cooper argue, many executive orders are in practice legislative in nature, thus presidents have acted throughout history as legislators through the arguably legitimate use of executive orders. By doing so they lay claim to powers which are not assigned to the Office of the President in the Constitution. Rather, the power to make laws are specifically granted to the legislative branch through Article I, section 1, of the Constitution stating that “All legislative Powers herein granted shall be vested in a Congress of the United States.”⁹⁷ Further Article 1, section 8 grants Congress with the power “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”⁹⁸ Reading the text of the Constitution, one can argue that in claiming the power to issue orders which are legislative in nature, the President goes beyond the limits of the powers assigned to the executive in the Constitution.⁹⁹

Looking beyond the general nature of executive orders, an aspect that needs to be assessed is the reasons for using the orders as a policy tool in the first place. It has been argued above that the efficiency by which the president is able to implement policies by issuing executive orders is an important factor when choosing to use this rout of policy implementation over alternative routes. The process of getting a policy preposition through Congress can be lengthy and cumbersome with all its procedures for voting and approval. The fact that executive orders are “the only instrument that presidents possess that is essentially independent from statutory, legislative and judicial oversight,” revokes the possibility for the system of checks and balances to work as a system to prevent excessive use and abuse of power.¹⁰⁰

Recognizing the conflicting interests between the President, Congress and the public, Krause and Cohen argue that the nature of executive orders and the argument of efficiency when reasoning the use of executive orders over other policy tools are challenging the notion of separation of powers as set forth in the Constitution. When writing the Constitution the Founding Fathers went to great lengths in order to create a system of government by the people, for the people. They wanted a liberal democracy and sought to create a system where

⁹⁷ U.S. Constitution, Art. 1, sec. 1

⁹⁸ U.S. Constitution, Art. 1, sec. 8

⁹⁹ Cooper, 21; Mayer 35; Olson and Woll, 1998

¹⁰⁰ Karuse and Cohen, (1997), 460

politicians through their actions would reflect the will of the people. Operated properly, the system would work to prevent future presidents from developing the government into a monarchy in practice, with the president acting unilaterally governing as kings. In order to prevent a “tyranny rule” the Founding Fathers created the system of checks and balances within the Constitution where the powers are separated and each branch checks the others.¹⁰¹

All in all, one can argue that the controversy connected to the use of such presidential tools of direct action as executive orders are grounded in the question of the limits of executive powers. As history has shown, even though such rapid action might be crucial in emergency situations, there is still reason to worry that presidents have accumulated powers far exceeding the constitutional limits during periods of war and national emergency. All the different ways listed above to check the respective branches along with numerous more are created in order to prevent abuses of powers from happening. When the president in practice through the use of executive orders takes the role as legislator, he claims powers which were formally assigned to Congress, thus crossing the limits of the powers constitutionally assigned to the executive. This is a practice which one can argue has been made legitimate through precedence, as executive orders have been issued by presidents since George Washington. Further, even though it happens occasionally, executive orders are in most instances not formally resisted by Congress or the Courts. Seeing this one can argue it is indeed important to be aware of the dangers and implications an uncritical and unchecked use of executive orders might pose for the liberal democracy the U.S. government is supposed to be.

¹⁰¹ Ibid.; U.S. Constitution; Cooper, 21; Mayer, 35

Clinton and Foreign-Policy Traditions

““We are a nation of rock-solid realism and clear-eyed idealism.””¹

– George H. W. Bush, State of the Union Message, 1991.

Throughout history realism has constituted a main vantage point for American foreign policy. However, as the above quote from George H. W. Bush’s 1991 State of the Union Message explicitly states, by exploring American foreign policy it is evident that there is a fundamental belief in idealism as part of American foreign policy thinking. Further, as political scientist and Secretary of State during the presidency of Richard Nixon, Henry Kissinger argues in his book *Diplomacy*, idealism, first put into words and arguably into practice by Woodrow Wilson, has been a crucial part of American presidents’ “leadership role” throughout the twentieth and into the twenty first century.² Political scientist Svein Melby argues in the book *Amerikansk Utenrikspolitikk*, that the coining of two traditionally (in Europe) separate political theories, creates a foreign policy scene in America like no other.³

Recognizing the peculiarity of the field of American foreign policy, the first section of this chapter will give an outline of the foreign policy traditions of realism and idealism, examining how they interact in American foreign policy through the notion of American exceptionalism. As we will see from the outline below there is a general agreement among scholars such as Henry Kissinger, Trevor B McCrisken, Svein Melby, and Hilde E. Restad that American exceptionalism constitutes an important part of the American identity and therefore is a vital factor when assessing American foreign policy. However, as the assessment will show, there are disagreements on how this perception of American exceptionalism is played out on the international scene. Consequently, following the discussion on realism v. idealism in American foreign policy, Clinton’s foreign policy will be discussed in relations to the concept of American exceptionalism, the foreign policy strategies of multilateralism and unilateralism, and finally, the concept of democratic enlargement. The

¹Svein Melby, *Amerikansk Utenrikspolitikk*, (Norsk Utenrikspolitisk Institutt (NUPI), TANO: 1995), at Nasjonalbiblioteket, NBdigital <http://urn.nb.no/URN:NBN:no-nb_digibok_2008061604012> (14 February 2012), 15

²Henry Kissinger, *Diplomacy*, (New York, NY, Simon & Schuster: 1994), 46

³Melby, 1995, 15 - 32

purpose of this chapter, then, is to provide a theoretical framework for the discussions later in the thesis.⁴

2.1 Realism and Idealism in American Foreign Policy

2.1.1 Realism

Realism as a political theory tradition consists of numerous different approaches to the field of international relations. Scholars emphasize different aspects and have different assumptions thus one finds that there exists numerous varieties within the realist tradition. However, while “there is no single ‘theory of Realism’”, one can argue that there are some fundamental assumptions to be applied when assessing the field of international relations.⁵

The prominent realist and political scientist Hans Morgenthau argues that looking through the lens of political realism one finds that politics has its roots in human nature. It is built on the belief that all human beings are fundamentally egocentric, and the primary goal is “minimizing risks and maximizing benefits.”⁶ Realism as part of international politics is in the view of realist John H. Hertz based on the notion that the nation-state is the “prime actor”⁷. Morgenthau’s classical realism further states the primary concept of political realism in international politics to be “the concept of interests defined in terms of power.”⁸ The nation-state’s engagement on the international scene, then, is conducted through “the pursuit of power” and influence, dependent on a country’s national interest.⁹ The different routes of political action are assessed in an attempt to find the answer to the question of “How does this policy affect the power of the nation?”¹⁰ As such, political action through collective solutions will in any instance only be of interest for a realist as long as it is perceived as being the best

⁴Kissinger, 1994; Trevor B. McCrisken, “Exceptionalism”, *Encyclopedia of the New American Nation*, 2012, <<http://www.americanforeignrelations.com/E-N/Exceptionalism.html#b>>, (2 February 2012); Melby, 1995, 15-32; Hilde E. Restad, “Old Paradigms in History Die Hard in Political Science: U.S. Foreign Policy and American Exceptionalism”, *American Political Thought*, March 2012, (provided by the author)

⁵Michael Mastanduno, “Preserving the Unipolar Moment: Realist Theories and U.S. Grand Strategy after the Cold War”, *International Security*, vol. 21, No. 4 (Spring, 1997): 49-88, online via JSTORE, <<http://www.jstore.org/stable/2539283>>, (March 30, 2012), 50.; Michael Joseph Smith, *The Realist Thought from Weber to Kissinger*, (Baton Rouge: Louisiana State University Press, 1986), 2

⁶Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 7th revised ed., ed. Kenneth W. Thompson, (Boston: McGraw – Hill Inc. 2005), 10, 3-13

⁷John H. Hertz, “Political Realism Revisited”, *International Studies Quarterly*, Vol. 25, No. 2, Symposium in Honor of Hans J. Morgenthau (Jun., 1981): 182-197, online via JSTORE, <<http://www.jstor.org/stable/2600350>>, (29 March 2012), 183.

⁸Morgenthau, 5

⁹Hertz, 1981, 188-189

¹⁰Morgenthau, 13

alternative seen from an individual nation-state's vantage point. Rather the international community is marked by a state of anarchy where every state should fend for itself and where a constant state of conflict which cannot be eliminated only contained, reigns. As a part of keeping these opposing interests and latent conflicts from escalating to the state of war, balance of power through acquisition of power and influence is seen as being one of the most important instruments for keeping peace within the international community.¹¹

Realism in American foreign policy can be found as far back as the 1770s, where tactical and political realist thoughts played a central role as American leaders sought independence from Europe. In the words of realist Henry Kissinger, in the nineteenth century the "foreign policy of the United States was not to have a foreign policy".¹² Thus territorial expansion and its manifestation through the Monroe Doctrine in 1823 were traditionally perceived as domestic affairs and a part of American idealist policies as a response to Europe and the European system of one-man-rules and the reliance on American exceptionalism. However, the Monroe Doctrine and the subsequent expansions across the American territory can be seen as part of the American realist tradition as it was mainly an attempt to secure American influence and power in the Western Hemisphere.¹³

Realist factors such as power and influence were also evident in American foreign affairs through wars and military expansion of the nineteenth century further taken into the twentieth century with the American entries into the First and Second World Wars. Moreover, one can argue that this emphasis on influence and power on the international scene have been kept alive in the post-Second World War era with the American entrance into the Cold War. However, American political elites have always been somehow reluctant towards full-fledged realist policies. Kissinger argues that "at no time in its history has America participated in a balance-of-power system."¹⁴ He further claims that while America in the eighteenth and nineteenth centuries "benefited from the operation of the balance of power" they were not taking a part in the European power struggle. What might appear as a balance-of-power situation during the Cold War, Kissinger argues, was something quite different. It was an "ideological, political, and strategic" two-power struggle with the Soviet Union where the balance-of-power system's notion that a state of "conflict leads to the common good" was deemed invalid. Rather the two-power struggle of the Cold War created a situation where

¹¹Morgenthau, 3-13; Melby, 1995, 15-17

¹²Kissinger, 36

¹³Ibid., 35-38; Melby, 1995, 15 - 19

¹⁴Kissinger, 22

one's gain is the other's loss.¹⁵

As the Cold War came to a “sudden” end at the beginning of the 1990s, realists faced increased criticism as they had failed to predict the Cold War's end and the transition into a new era in international relations. Despite the criticism one finds that realist thoughts have prevailed and developed, adapting to the policies of a new era of international relations seen in the 1990s. The increased priority of new economic and security matters in the American foreign policy field gave realism renewed applicability as realists have sought to explain and predict international relations as part of this new era. Political scientist Michael Mastanduno argues in the article *Preserving the Unipolar Moment: Realist Theories and U.S. Grand Strategy after the Cold War*, that American engagement on the international scene after the Cold War can be explained by different realist approaches, one of these being the “balance-of-power” system as advocated by neorealist and political scientist Kenneth Waltz.¹⁶

Waltz argument of increased relevance of the balance-of-power as part of American foreign policy contradicts Kissinger's point about the U.S.'s traditional reluctance to engage in balance-of-power politics. Despite Kissinger's argument, Waltz balance-of-power theory does help explain the increased centrality of economic policies on the foreign policy agenda, as will be further elaborated upon below. However, events of the recent past with American military involvement in Afghanistan and Iraq shows that realist policies have to a large degree been accompanied by idealist foreign policy thoughts.¹⁷

2.1.2 Idealism

While realism as a foreign policy theory is focused on the sovereign state finding for its own interests, idealism as a foreign policy theory is concerned with reaching what is perceived as being “overarching ideals and goals”.¹⁸ It is built on the notion that human beings are essentially good, and if some people contradict these values and what is perceived as morally good, idealists tend to blame the system. They believe that as long as the environment is right and people are directed towards what would be in their common interest, they would act accordingly. What these goals and ideals are, depend on the foundational moral values of those involved. However, the western (European) tradition finds “human rights, peace, and

¹⁵Ibid., 22

¹⁶Mastanduno, 49-51

¹⁷Ibid., 73-76; Kissinger, 35-38; Melby, 1995, 15 – 19

¹⁸Melby, 1995, 15

democracy” to be important focal points.¹⁹

Applied to international politics, idealism build on the notion that developing and reaching a common foundation of ideas, norms, and values, might lead to conflict containment and even better the total elimination of conflicts. Thus according to the idealist tradition, individual states can be willing to give higher priority to issues perceived as being in the best interest of the international community, through universally valued moral goals, rather than focusing solely on the individual interest of the nation. Moreover, contrary to common perceptions regarding realism and the use of force there is a widespread perception that idealists are reluctant to use force in order to achieve their ideals and goals. However, this does not necessarily need to be the case. For some the realization of the ideals might be of greatest concern, thus the end justifies the means.²⁰

The idealist tradition in America can trace its roots back to the arrival of the Pilgrims and Puritans in the seventeenth century. In a speech during the crossing from England in 1630 one of the Puritans, John Winthrop, who would become Governor of the Massachusetts Bay Colony, proclaimed what would be the basis for the American idealist tradition and American exceptionalism. Proclaiming his vision of the New England colony, Winthrop stated that “wee shall be as a Citty upon a Hill, the eies of all people are uppon us”.²¹ Kissinger defines this as an approach to American Idealism where “America serves its values best by perfecting democracy at home, thereby acting as a beacon for the rest of mankind.”²² However, despite Winthrop’s early statement of idealist thoughts of America’s relations to the rest of the world, Idealism as a foreign policy tradition was first introduced to the scene of international relations by the British Prime Minister William E. Gladstone in the 1880s. American foreign affairs were first introduced to idealism as a political tradition by President Woodrow Wilson. Building on and emphasizing the American foreign policy tradition of democracy and human rights the American idealism as presented by Wilson is to a large degree similar to the idealism referred to as the “Western tradition”²³. Human rights and democracy are highly regarded values which those adhering to idealism strive to promote. However, in addition one finds that idealism as part of the American foreign policy is marked by a widly held advocacy of market economic ideals and progress.²⁴

¹⁹Ibid., 15

²⁰Ibid., 16

²¹John Winthrop, “City upon a Hill, (New England, 1630)”, *Documents Relating to American Foreign Policy, Pre 1898*, <<http://www.mtholyoke.edu/acad/intrel/winthrop.htm>>, (April 12, 2012)

²²Kissinger, 18

²³Melby, 1995, 15

²⁴Ibid.,31-32; Kissinger, 45-46, 160-161

Since idealism is such a vital part of American political thinking and American identity, the significance of American ideals and values as a part of political thought is very much present. As Wilson proclaimed during his presidency, the prominence of ideals and values in American politics makes protection and promotion of these values and ideals domestically as well as in foreign affairs a matter of great importance and vital to the continued existence of the United States. If American values are perceived challenged or threatened by an outside force, the protection of the American system of ideals and values become a matter of national security interest. By linking the protection of American values and ideals to national interests, one finds that the idealist tradition merges with the realist tradition. This, one can argue was the case after the 9/11 terrorist attacks by Taliban in America and President George W. Bush's launching of war on terror in Afghanistan. Further as the discussions of the Kosovo intervention will show, this was the case when Clinton deployed American military forces to stop the human rights breeches in the Balkans during the 1990s. It is through such merging of Idealist beliefs with American foreign policy interests that one finds a coexistence and merging of Realist and Idealist thought, rather than separate and conflicting camps in the American foreign policy field.²⁵

There is also a second aspect in the American Idealist tradition which separates it from the "Western tradition", which is the concept of American exceptionalism. Melby argues that exceptionalism is of great significance when assessing Idealism by carrying American tradition and as an integrated part of American identity, thus explaining Idealism as a natural part of American politics and further helping to explain how Idealism and Realism are linked together. This argument is further emphasized by political scientist Hilde E. Restad who argues that in the field of foreign policy, American identity can be defined as American exceptionalism.²⁶

2.1.3 American exceptionalism as part of Idealism

As most American presidents before him Woodrow Wilson had "an unwavering belief in American exceptionalism".²⁷ The concept of American exceptionalism reflects an "historical

²⁵Ivo H. Daalder and James M. Lindsay, *America Unbound – The Bush Revolution in Foreign Policy*, (Washington, D.C., Brookings Institution Press: 2003), 5; Melby, 1995, 31-32

²⁶Melby, 1995, 20

²⁷Daalder and Lindsay, 2003, 6

tradition of American self perception and U.S.A's role in the world community.”²⁸ Scholars such as historian Michael H. Hunt and Deborah Madsen argue that American exceptionalism can be found at the core of the American national identity. Political scientist Trevor B McCrisken holds that, first referred to by Alexis de Tocqueville in his work “Democracy in America” (1835-1840), the term American Exceptionalism is used “to describe the belief that the United States is an extraordinary nation with a special role to play in human history; a nation that is not only unique but also superior.”²⁹ Thus American exceptionalism, reflected in American foreign policy inhibits the notion that the U.S. has a special responsibility in world politics. As a part of the American national identity, American exceptionalism has according to historian Michael H. Hunt implemented in "generations of Americans that essential function of giving order to their vision of the world and defining their place in it.”³⁰

As John Adams once expressed: ““United States will last forever, govern the globe and introduce the perfection of man””.³¹ This quote by John Adams serves as an example of an attitude in the American tradition that the U.S. has been given a role of higher moral value and different ideals and standards than other countries. This is an attitude which has been evident in American foreign policy since Adams time, and especially during the twentieth and into the twenty first century, as we will see in the next chapter.³²

Both Henry Kissinger and Trevor B. McCrisken divide American Exceptionalism into two groups which one can argue would when applied to American foreign policy give two quite different political courses. These two directions are referred to by several different names such as the “Sense of Escape”, “the exceptional nation”, or the “isolationist approach” and “Manifest Destiny” or “the missionary nation”.³³ The “Sense of Escape” or isolationist approach of American exceptionalism is described as a “foreign policy” course which can be traced back to the early beginning of the American nation, with the arrival of British Puritans escaping rigid systems of religious prosecution and economic stagnation. Their experiences from the Old World led them to create a system which would allow for social mobility and religious freedom and the notion of the self-made-man. Even more importantly they would create a system which would prevent Old World ideas and impulses from taking root and

²⁸Melby, 1995, 20; McCrisken, *Exceptionalism*; Hilde E. Restad, “Old Paradigms in History Die Hard in Political Science: U.S. Foreign Policy and American Exceptionalism”, *American Political Thought*, March 2012, (provided by the author)

²⁹McCrisken, *Exceptionalism*

³⁰Ibid.; Melby, 1995, 21

³¹John Adams, as quoted by Melby, 1995, 21

³²Melby, 1995, 20-21

³³Kissinger, 18; McCrisken, *Exceptionalism*; Melby, 1995, 22

America from getting entangled in the political world of the great powers, a world which was marked by the political rules of the system they were fleeing. Standing up against the great European powers on the international scene was no option for the newly established colonies. The best option was for America to keep the Old World at a comfortable distance, thus an “idealistically inspired urge for isolationism” emerged.³⁴

As a part of this isolationist approach McCrisken refers to Winthrop’s notion of a “City upon a Hill”, defined as a total retreat from international interaction deemed necessary in order to secure the values of the American Republic. Through this notion of America as a “City upon a Hill”, America would serve not only as an example of an alternative way of government it would also pose itself as the ideal way, spreading its foundational values by example. Not until the world has changed in ways favorable to the American system and ideas will international involvement be an alternative. Fundamentally an isolationist course, one finds within this particular course of exceptionalism a notion of “Fortress America” and a preference for “nonentangling” alliances. Originating from the Puritans arrival on the American continent in the seventeenth century, scholars argue this isolationist/aloof course foreign policy has been most prevalent in the early days of American history. However, as will be further elaborated upon later in chapter four, this isolationist/aloof approach has taken turns at the forefront of American foreign policy in more recent years as well.³⁵

“Manifest Destiny” as a direction within the concept of American exceptionalism represents the opposite of the isolationist approach. Kissinger defines this approach as the crusader/missionary approach where it is believed that “America’s values impose on it an obligation to crusade for them around the world.”³⁶ Broad international engagement is seen as essential in order to secure the existence of the American system and to achieve U.S. foreign policy goals. Melby claims that this direction holds that America needs to prevent an international discourse marked by “hostile ideologies and traditional power politics,” whatever the cost.³⁷ As the exemplary nation direction of American exceptionalism, the “Manifest Destiny” direction can be traced back to the Puritans. However, “Manifest Destiny” both as a phrase and as an actual foreign policy conviction, did not gain a proper hold on American political thought until the nineteenth century, when “Manifest Destiny” was used to justify the American territorial expansion.³⁸

³⁴Melby, 1995, 22

³⁵Daalder and Lindsay, 2003, 10; McCrisken, *Exceptionalism*; Melby, 1995, 23

³⁶Kissinger, 18

³⁷Melby, 1995, 25

³⁸Ibid., 25-26

Adding to the previous argument, journalist and historian Godfrey Hodgson argues in his book *The Myth of American Exceptionalism* that although America has been perceived as exceptional by its own inhabitants from the founding day, the real manifestation of American exceptionalism over the rest of the world came in the twentieth century. Henry Kissinger argues that Wilson “was the embodiment of the tradition of American exceptionalism.”³⁹ Wilson, who entered the Oval Office on a commitment to domestic policies, is remembered as the American president who “originated what would become the dominant intellectual school of American foreign policy.”⁴⁰ He strongly believed in the “universal applicability” of American values and sought to create a new world order at the end of the First World War based on the establishment of international law, democracy and free commerce.⁴¹ As the greatest missionary/internationalist in American history, Wilson did not live to see his legacy put into life. However, President Truman’s commitment to the establishment of the United Nations after the Second World War was as political scientists Ivo H. Daalder and James M. Lindsay argue in their book, *America Unbound: The Bush Revolution in Foreign Policy*, completely in the spirit of Wilson’s internationalism. The United States was taking the lead in the creation of international law and cooperation through the establishment of the United Nations, which was based on the American values of democracy and human rights.⁴²

McCracken and Melby refer to this direction of exceptionalism as constituting a missionary attitude where an active and committing role on the international scene, promoting American ideals and values and eventually harmonizing international ideals with those of the U.S. This internationalist approach to American foreign policy, Wilson argued, was essential for securing America’s “soul” and the continued existence of the American republic, which should be the over arching goal of American foreign policy. Eventually, this harmonization of ideals and values will prevent outbreak of wars and eliminate all conflict within the international system. One can argue that this represents what McCracken refers to as internationalism and an attitude of America as the “leader of the free world”.⁴³

From this outline of American exceptionalism, one can derive that American exceptionalism contributes to the creation the idealistic foundation for two fundamentally different routes along which to conduct foreign policy found within the theory of international

³⁹Kissinger, 44

⁴⁰Ibid.

⁴¹Ibid., 45

⁴²Godfrey Hodgson, *The Myth of American Exceptionalism*, (New Haven and London: Yale University Press, 2009), 26, 21-27; Daalder and Lindsay, 2003, 5; Kissinger, 1994, 18

⁴³McCracken, *Exceptionalism*; Melby, 1995, 20; Daalder and Lindsay, 2003, 6

relations referred to as Idealism.⁴⁴ Building on this exemplary/missionary dichotomy, one finds that within the field of American foreign affairs, Realism is to some extent present as part of the beliefs of most groups of American foreign policy thinkers and politicians, rather than dividing them into conflicting groups of Realists and Idealists. Where one will find conflicting opinions on the conduct of American foreign policy, however, is within the Idealist camp itself. While one branch argues for a retracted and aloof foreign policy through the adherence to the isolationist approach of American exceptionalism within Idealism, a second branch advocates for the moral obligation and importance of spreading American ideals and values throughout the world as part of the American “Manifest Destiny.”⁴⁵

2.1.4 American exceptionalism reevaluated

Contrary to the views of many scholars of history and political science, among those Svein Melby and Trevor B. McCrisken, one finds the arguments of political scientist Hilde E. Restad. In her article *Old Paradigms in History Die Hard in Political Science: U.S. Foreign Policy and American Exceptionalism*, Restad argues that the long prevailing notion in conventional literature that there exists two dichotomies one identity dichotomy the missionary/exemplary exceptionalism and one foreign policy dichotomy of internationalist/aloof (isolationist) is outdated and even wrong. Rather she argues that

*when studying U.S. foreign policy, American identity is most usefully defined as American exceptionalism because the belief in American exceptionalism has been a powerful, persistent, and popular myth throughout American history, and furthermore, has been used in formulating arguments for ever more internationalist and expanding foreign policies.*⁴⁶

Restad agrees with the common notion that the initial foundation of American exceptionalism as part of American identity can be traced back to the early beginnings of the Republic, starting with the arrival of British Puritans. But rather than maintaining the idea of two separate identities as used by both McCrisken and Melby to explain American foreign policy as cyclical or periodical, Restad argues that the two ideas of exceptionalism “fused” as an effect of the American Revolution, creating “a powerful sense of exceptionalism which, while consisting of two complementary aspects, has *not* led to two distinct foreign policy

⁴⁴ Melby, 1995, 25

⁴⁵ Ibid., 20-27

⁴⁶ Hilde E. Restad, “Old Paradigms in History Die Hard in Political Science: U.S. Foreign Policy and American Exceptionalism”, *American Political Thought*, March 2012, (provided by the author), 3

traditions.”⁴⁷ Thus, one can argue the emphasis which these scholars put on U.S. foreign policy as changing between internationalist and aloof periodically or cyclically are misguided at best.

If the westward expansion and acquisition of the Philippines, fighting wars against foreign powers and economic interaction abroad during the nineteenth century is accepted “as evidence of internationalism”, Restad continues, the U.S. took an active role on the international scene from the beginning.⁴⁸ In her Ph.d. dissertation *Identity and Foreign Policy: The Case of American Exceptionalism and Unilateralism*, Restad argues that “the way in which American exceptionalism has influenced foreign policy is to inspire unilateral internationalism.”⁴⁹ Exceptionalism as part of the American identity has contributed to providing legitimacy for American leaders to act unilaterally on the international scene with no entangling alliances, rather than adhering to an American foreign policy of aloofness/isolationism.⁵⁰

Melby argues that in contrast to other Western countries’ foreign policy, American foreign policy is marked by two dominant political traditions, Realism and Idealism. These are inherently intertwined by the diverging understandings of American exceptionalism creating conflicting views in the foreign policy field on multilateralism and unilateralism. Hilde E. Restad on the other side argues that American foreign policy is characterized by the American Identity defined as American exceptionalism resulting in an imprint of unilateral internationalism on American foreign policy. Recognizing these diverging views, the following section will assess Bill Clinton’s foreign policy in order to get an understanding of where his foreign policy fits in among the foreign policy traditions of Realism and Idealism with aspects such as American exceptionalism, unilateralism and multilateralism.⁵¹

2.2 Clintons Foreign Policy Assessed

2.2.1 Realism v. Idealism - American exceptionalism

With the Cold War drawn to an end the global diplomatic situation was less tense than it was

⁴⁷Ibid., 6

⁴⁸Ibid., 22

⁴⁹Hilde E. Restad, *Identity and Foreign Policy: the Case of American Exceptionalism and Unilateralism*, (Virginia: Woodrow Wilson Department of Politics, University of Virginia, 2010), 5, online via ProQuest <<http://search.proquest.com/docview/857970390>>, (27 February 2012); Restad, 2012, 5

⁵⁰Restad, 2012, 1 - 23

⁵¹Ibid., 5; Melby, 17 - 32

during the roughly forty years countering Soviet threats and aggression. At the same time the world community was witnessing the creation of several new independent European states. The fall of the Soviet Union did not only loosen up a tense international scene. According to Ambrose and Brinkley “the end of the Cold War meant the loss of a single enemy (...) around which to rally a national and international consensus”⁵². Agreeing with Ambrose and Brinkley, John Dumbrell argues that one of the greatest challenges that faced Clinton when taking office was the lack of a clear political course in the field of foreign policy. Clinton himself entered the election on a domestically oriented agenda, rather than continuing down the road of the Cold War political scene where the focus of foreign policy had prevailed the past forty years. He argued for the need to deal with the issues such as a dismantling economy at home, which he asserted was caused by George H. W. Bush “paying too much attention to global affairs at the expense of domestic renewal.”⁵³ Clinton was eager to start working on issues such as the budget deficit and healthcare reform, which he regarded as his main agenda.⁵⁴

Determined to make economic policies an integrated part of American foreign policy, Clinton brought issues of trade and export to the international scene, thus as Kenneth Waltz argues, engaging in a balance-of-power system. Whereas the American political line during the Cold War would allow less trade and economic growth on behalf of the American economy in relations to their allies as a means to prevent them from falling prone to Communism, the 1990s saw a new attitude towards the American economy. The foreign policy scene was marked by Clinton’s advocacy for the importance of making economic policy a part of the American foreign policy. Thus the United States in the post-Cold War world became part of a balance-of-power system where its foreign political goals were to gain economic influence and power as part of the increasingly globalized and strong international economy. Clinton’s emphasis on the economy as part of his foreign policies will be further elaborated upon in chapter three.⁵⁵

Regardless of how reluctant Clinton was to coin a comprehensive foreign policy, the situation abroad as he took Office with American forces involved in the crises in Somalia, Haiti, and Bosnia demanded the new president to take action. Clinton’s failure to create a comprehensive foreign policy and thus lining out U.S. role on the international scene in the

⁵²Stephen E. Ambrose and Douglas G. Brinkley, *Rise to Globalism: American Foreign Policy Since 1938*, ed. 8 (New York, NY: Penguin Books, 1997), 402

⁵³Ambrose and Brinkley, 399

⁵⁴Ibid., 398-400

⁵⁵Mastanduno, 73-76

post-Cold War world had great consequences for American foreign policy in the years that followed. Ambrose and Brinkley argue that after harsh critique from the opposition, foreign policy analysts, and even from within his own party, President Clinton and his administration found themselves trying “to identify a single ‘compass’ word or concept which would embrace the three foreign policy themes” Clinton had emphasized during his presidential campaign.⁵⁶

Without a single enemy such as the Cold War Soviet Union to rally around forging a comprehensive foreign policy proved to be a great challenge. Realizing the need to place the U.S. within the new world order Clinton and his administration sought to create a new concept that would replace the Cold War concept of “containment”. After fumbling with several different alternatives such as “engagement and enlargement”, the administration decided on “democratic enlargement” to constitute the foreign policy strategy. This has been referred to by scholars such as Dumbrell, Ambrose, and Brinkley as the “Clinton Doctrine.”⁵⁷

Constituting the administration’s foreign policy strategy, the “enlargement strategy” focused on four main points:” 1) ‘strengthen the community of market democracies’; 2) ‘foster and consolidate new democracies and market economies where possible’; 3) ‘counter the aggression and support liberalization of states hostile to democracy’; and 4) ‘help democracy and market economies take root in regions of greatest humanitarian concern.’”⁵⁸

With the concept of democratic enlargement clearly emphasizing democracy and market economy as essential values and ideals as part of Clinton’s foreign policy concept one can place “democratic enlargement” within the American Idealist tradition. Further recognizing the importance of promoting these values and ideals abroad, there is a strong tendency of Clinton’s foreign policy concept leaning in the direction of the United States as a missionary nation within the Idealist notion of American exceptionalism. However, this is in theory.⁵⁹

Albeit the concept of democratic enlargement as coined by Clinton’s National Security

⁵⁶Ambrose and Brinkley, 405-406

⁵⁷Ambrose and Brinkley, 406; John Dumbrell, “Was There a Clinton Doctrine? President Clinton’s Foreign Policy Reconsidered”, *Diplomacy & Statecraft*, 13:2, 43-56, 2002, Online via Taylor and Francis Online, <<http://www.tandfonline.com/doi/abs/10.1080/714000309>>, (18 January 2012), 43

⁵⁸Ambrose and Brinkley, 406

⁵⁹Chapter 3 will provide a discussion of Clinton’s foreign policy strategy “democratic enlargement” in relations to the four schools of American foreign policy thinking, Hamiltonians, Wilsonians, Jacksonians, and Jeffersonians, as presented by Professor of Foreign Affairs, Walter Russell Mead in his book *Special Providence – American Foreign Policy and How it Changed the World*. As you can see in chapter three, the discussion places Clinton within the neo-Jeffersonian line of thought agreeing with political scientist John Dumbrell who labels the concept of “democratic enlargement” as neo-Jeffersonian, coining the Wilsonian belief in fostering democracy and markets” with “more traditional geopolitical interests”.

Adviser Anthony Lake and NSC speech writer Jeremy Rosner in the fall of 1993, is coined on Idealist values and ideals with a missionary inclination, one finds by assessing Clinton's foreign policy after the concept of "democratic enlargement" first was introduced that in practice this was not quite the case. After the tragic outcome of the U.S. led UN mission in Somalia where 19 Americans died, among those the Black Hawk crew chief, and news broadcasts showing the chief's body being dragged through the streets of Mogadishu, Clinton sought to reform multilateral peace operations. He moved to present a Presidential Decision Directive (PDD), a second power-tool at the President's disposal. PDD 25 stated the importance of UN supported diplomatic initiatives and peace operations. However, the PDD 25 further limited U.S. military engagement in UN operations such as "preventive diplomacy, traditional peacekeeping, and peace enforcement", (...) to "a case by case basis", severely restricting U.S. engagement abroad.⁶⁰ The resulting reluctance to use force in third world countries such as Rwanda and former Yugoslavia shows an adherence to an aloof foreign policy, with the U.S. taking the position as an exemplary rather than a missionary nation, thus manifesting Clinton's clear inclination to deal with domestic issues rather than getting involved in international operations.

Not only does the PDD 25 constitute an Idealist and exemplary/aloof attitude on behalf of the Clinton administration, it does also provide a linkage between the Idealist tradition and the Realist tradition. The PDD 25, and especially the effects of the directive presents an attitude of aloofness where the U.S. bases the decision of whether to get involved abroad or not on geopolitical interests. Thus, since the civil war in Rwanda did not present an imminent threat to American national security or other geopolitical interests, Clinton chose not to get involved in the conflict. How the U.S. was involved in Bosnia along with its NATO allies, as opposed to Rwanda poses an interesting paradox.⁶¹

2.2.2 Multilateralism v. Unilateralism

In his essay *Is American Multilateralism in Decline?* political scientist G. John Ikenberry defines multilateralism as "the coordination of relations among three or more states according to a set of rules and principles."⁶² As such, Ikenberry claims that "multilateralism can operate

⁶⁰William J. Clinton, *Presidential Decision Directive 25*, 3 May 1994, online via The William J. Clinton Presidential Library, <http://www.clintonlibrary.gov/_previous/Documents/2010%20FOIA/Presidential%20Directives/PDD-25.pdf>, (29 February 2012), 3

⁶¹Mastanduno, 76

⁶²G. John Ikenberry, "Is American Multilateralism in Decline?", in *Liberal Order and Imperial Ambitions – Essays on American Power and World Politics*, ed. G. John Ikenberry, (Cambridge: Polity Press, 2006), 248

at three levels of international order: system multilateralism” which is based on the “sovereign state system”; “ordering or foundational multilateralism” which constitutes “basic organizing principles and features of the international order” where economy and security are inseparable issues; “contract multilateralism” which is based on “individual agreements/treaties among groups of states”.⁶³ Further one can find multilateralism as “understood in terms of its sources”, for example from the international system, based on “complex interdependence, unipolarity” and “the rise of nonstate violent collective action”; from “pre-existing multilateral institutions”; through domestic factors such as “American identity, limiting fiscal and manpower costs” or “election cycles”; or through sources which Ikenberry labels as agentic influenced by “ideologies of government elites,” nongovernmental institutions and the structures of treaties.⁶⁴ Moreover, Ikenberry argues that “the United States has always been ambivalent about multilateral commitments” as its foreign policy strategy.⁶⁵ As will be further elaborated on in chapter three, this reluctance to engage multilaterally can be explained by several different factors such as the fear of international law undermining the U.S. Constitution or American sovereignty. Below, we will see that Clinton’s foreign policy might serve as a prime example of this.⁶⁶

Ambrose and Brinkley argue that “Clinton, a proponent of multilateralism, would always prefer to engage in global police action when the U.N. or NATO was resolutely at America’s side.”⁶⁷ This one can argue is evident during the first few years of Clinton’s presidency. From his inauguration in January 1993 until 1995, American troops were involved in eight military operations abroad, all of which were backed by U.N. resolutions and some even supported by NATO forces. Of these, three missions were carried over from the previous president, and sustained during Clinton’s presidency. The share of military operations conducted by U.S. forces backed by the U.N., show an attitude on behalf of the Clinton administration in favor of multilateralism and U.N. cooperation.⁶⁸

However as noted above, the failure in Somalia led to a severely restricted policy towards deployment of American forces abroad after the issuance of PDD 25 in 1994. This

⁶³Ibid.

⁶⁴Ikenberry, 2006, 249-250

⁶⁵Ibid., 270

⁶⁶UN, “Chapter IV, Human Rights”, Status As At 24.02.2012, (United Nations, Treaty Collection), <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en>, (24 February 2012); “Supremacy Clause”, West’s Encyclopedia of American Law, edition 2. (The Gale Group, Inc. 2008), < <http://legal-dictionary.thefreedictionary.com/Supremacy+Clause>>, (24 February 2012)

⁶⁷Ambrose and Brinkley, 400

⁶⁸UN, “List of Peacekeeping operations, 1948-2011”, accessed via United Nations Peacekeeping, <<http://www.un.org/en/peacekeeping/documents/operationslist.pdf>>, (1 March 2012)

was especially evident in geographical areas where the U.S. found that they had no geopolitical interests. In the years that followed the issuance of PDD 25, American forces were deployed to conduct fourteen military operations abroad. While all of Clinton's troop deployments during the two first years were a part of a multilateral U.N. effort, only four of the fifteen deployments were actively taking part in U.N. operations after PDD 25 was issued. Among these four, three were operations involving the use of NATO forces. The remaining eleven operations which involved U.S. military troops were in most instances minor operations where the main purposes for deployment were the protection and possible evacuation of U.S. citizens and U.S. government personnel, (Liberia, 1996; Albania, 1997; Sierra Leone, 1997). This further confirms the Realist component of Clinton's foreign policy.⁶⁹

The fact that possible interventions were backed by U.N. Security Council resolutions did not matter for Clinton, at least not to lessen American restrictiveness towards involvement abroad. Thus, one can argue that starting in 1994 Clinton was leading American foreign policy further away from the adherence to multilateralism argued by Ambrose and Brinkley. Rather the Clinton administration's foreign policy with regards to involvement of military troops abroad turned towards unilateralism when engaging abroad after the Somalia incidence. Clinton's reluctance to deploy American forces for the purpose of U.N. led operations reflects the attitude of the anti-League internationalist leader, Republican Senator Henry Cabot Lodge of Massachusetts asking Congress in 1919 "Are you willing to put your soldiers and your sailors at the disposition of other nations?"⁷⁰ In the spirit of Cabot Lodge, the Clinton administration increasingly conducted a foreign policy of unilateral internationalism. This further confirms Restad's claim of an increasingly unilateral internationalist American foreign policy, and further confirms Ikenberry's claim that foreign policy with regards to the use of American military forces tends to be unilateralist in nature.⁷¹

Despite this evident reluctance to engage American military personnel on the international scene, there is one field where Clinton proved to give considerably greater attention as part of his foreign policy. Determined to emphasize economic policies in domestic as well as in foreign affairs, promotion of market economies and free trade was made an important part of the concept of "democratic enlargement". As will be further

⁶⁹UN, "List of Peacekeeping operations, 1948-2011", accessed via United Nations Peacekeeping, <<http://www.un.org/en/peacekeeping/documents/operationslist.pdf>> (1 March 2012); Richard F. Grimmett, "Instances of Use of United States Armed Forces Abroad, 1798 – 2009", *Congressional Research Service*, January 2010, <<http://www.au.af.mil/au/awc/awcgate/crs/rl32170.pdf>>, (1 March 2012)

⁷⁰Daalder and Lindsay, 2003, 8

⁷¹Ikenberry, 2006, 270; Restad, 2012, 5

elaborated upon in the next chapter, Clinton saw the integration of the American economy into the globalizing world economy as an essential part of democracy-promotion and an important aspect of American national security.⁷²

As part of economic policy and democratic enlargement, Clinton faced his first critical challenge with the implementation of NAFTA. Starting out as a bilateral free trade agreement between the U.S. and Canada in 1988, the agreement developed into a multilateral free trade agreement as Mexico lowered its import tariffs, culminating with the Mexican president, Carlos Salinas suggesting the creation of a trade agreement between the U.S. and Mexico in 1990. As Clinton entered the White House the entire agreement was facing the danger of not being realized as anti-free trade voices, such as Republican Ross Perot, feared that millions of Americans would risk losing their jobs to Mexican workers as plants were moved south of the border. Perot was accompanied by Pat Buchanan arguing for the importance of U.S. sovereignty.⁷³

Clinton, however, was moving from “economic nationalism to globalist free trader” arguing that ratification of NAFTA would eventually lead to serious job growth within the United States.⁷⁴ He advocated for the implementation of the multilateral free trade agreement as he saw the possibility of increased leverage in the GATT round negotiations ahead. Despite domestic resistance to NAFTA, Clinton saw it as essential for American integration into the world economy, as he believed that other countries especially in the Latin American region would follow suit and open their markets and eventually become a part of a democratic world order.⁷⁵

One can argue that due to the superiority of American military power the United States could afford to uphold a unilateral foreign policy in relations to the use of military force or arms control. However, the economic political field was and still is to a much larger degree vulnerable and reliant on outside forces and smaller countries. Acting unilaterally through economic foreign policies could as Ikenberry argues lead “other countries” to “impose tangible costs on the United States” in the area of trade.⁷⁶ Thus joining in economic multilateral agreements would be beneficial for the U.S. since it would lead to increased legitimacy and leverage as part of the globalizing economic order. Dumbrell claims that “accepting NAFTA would enable America at least to shape and arrange global change to its

⁷²Ambrose and Brinkley, 402; John Dumbrell, *Clinton's Foreign Policy – Between the Bushes, 1992 - 2000*, (New York, NY: Routledge, 2009), 45-50; Dumbrell, 2002, 47

⁷³Dumbrell, 2009, 50-53

⁷⁴Ibid., 53

⁷⁵Ibid., 52

⁷⁶Ikenberry, 2009, 270

benefit – surrendering to the inevitable while retaining the ability to lead.”⁷⁷

As a solid proof of Clinton’s adherence to multilateralism in the economic political arena, Clinton managed to get the agreement through the legislative vote as the House voted 234-200 in favor and the Senate vote ended at 61-38 in favor of ratification. Clinton signed the agreement and implemented it through the issuance of *Executive Order 12889 - Implementation of the North American Free Trade Agreement* on December 27, 1993.⁷⁸

However, a big step towards economic multilateralism as NAFTA arguably was did not mean that American economic foreign policy was going to be solidly multilateral in the years that followed. Barely a year after Clinton signed the executive order ordering the implementation of NAFTA the agreement faced severe trouble as the Mexican peso collapsed in the winter of 1994-1995. Since Mexico was the third-largest trading partner of the U.S., a strained Mexican economy would limit trade to a minimum and potentially lead to an influx of Mexican economic refugees. Meeting resistance in Congress, Clinton used his own authority to rescue a vital trading partner in January 1995. Following the Mexican crisis and the International Monetary Fund (IMF) supported rescue, the Clinton administration faced new challenges as the Asian financial market collapsed in 1997. As a result of the successful peso rescue, the administration found itself engaged in what Dumbrell refers to as “some extraordinary unilateral interventions” where the U.S. Treasury led an intervention on behalf of the Japanese yen worth several billion dollars.⁷⁹ The continued economic crisis in Asia led to an enhancement of Washington’s inclination to act as part of the multilateral economic community. Favoring cooperation with the IMF Clinton was working against an “anti-IMF” and a “new anti-globalization coalition” in Congress. However, the tide was eventually turning in favor of increased U.S. commitment to IMF as reform requirements aimed at changing the Asian economic tradition was accepted as part of the U.S. supported Asian economic aid by the IMF.⁸⁰

⁷⁷Dumbrell, 2009, 52

⁷⁸Ibid., 53; William J. Clinton, “Implementation of the North American Free Trade Agreement” Executive Order, 27 December 1993, <<http://www.archives.gov/federal-register/executive-orders/pdf/12889.pdf>>, (2 March 2012)

⁷⁹Dumbrell, 2009, 56

⁸⁰Ibid., 54-61; Bradford DeLong, Christopher DeLong, and Sherman Robinson, “The Case for Mexico’s Rescue: The Peso Package Looks Even Better Now”, 1996, in *Foreign Affairs*, May/June, 1996, <<http://www.foreignaffairs.com/articles/52034/bradford-delong-christopher-delong-and-sherman-robinson/the-case-for-mexicos-rescue-the-peso-package-looks-even-b>>, (4 March 2012)

2.3 Conclusion

From the assessment above one can argue that Clinton's foreign policy, rather than sticking whole heartedly to one foreign policy tradition merged the two traditions of realism and Idealism. It is clear that eventually as part of the administration's foreign policy strategy of "democratic enlargement" and advocacy of the importance of America taking a part in the globalizing economy, Clinton put great emphasis on idealist values and goals such as human rights, democracy and free market economies. However, his reluctance to involve American troops in U.N. authorized operations abroad, rather deploying limited forces in order to protect American interest, reveals parallels to the realist tradition as he emphasized national interests (PDD 25) as a requirement for becoming involved on the international scene. In doing so, Clinton can be placed within Restad's category of unilateral internationalism. On the other hand, as is evident in the assessment above, Clinton's emphasis on global free trade, taking the lead in the creation of NAFTA, joining the WTO and increasing commitment to the IMF show a preference for active multilateralism. Despite anti-globalization forces in Congress and the public slowing down Clinton's march towards global free trade, Clinton arguably embraced a missionary role for the United States placing his foreign policy within the notion of "Manifest Destiny" as he strove to put America in the drivers' seat of the spurring economic globalization. As previously stated, this changing emphasis between multilateralism and unilateralism in Clinton's conduct of foreign policy can be seen as confirming Ikenberry's argument of American ambivalence towards multilateralism. Whereas the field of "arms control and the use of force" has generally been perceived as the policy field where American leaders tend to turn unilateralist, protecting American supremacy and sovereignty, "areas such as trade" tend to be managed through multilateral cooperation and organizations.

Clinton's Foreign Policy

Bill Clinton entered the presidency as the first American president elected after the end of the Cold War. The lack of an international threat such as Communism during the Cold War left Clinton in a post-Cold War world where he was forced to find a new role for the United States as the sole remaining Super Power. Clinton was criticized by fellow politicians and scholars alike for his lack of a clear foreign policy to replace the old foreign policy strategy of containment. Clinton himself emphasized his belief in the “democratic peace,” and that free trade was the key to America’s domestic issues. Stephen E. Ambrose and Douglas G. Brinkley argue in their book, *Rise to Globalism*, that “Clinton saw his primary goal as President to make the world safe for U.S. business and its global system of capital accumulation.”¹ This they continue is evident in the foreign-policy concept “democratic enlargement,” which was coined by his advisers after repeated failures abroad.²

This chapter will provide insight into different aspects of the foreign-policy issues that faced Clinton during his presidency. The first section will give an assessment of Clinton’s use of executive orders as part of his foreign policy, and in relations to presidents of the past and the present, starting with the presidency of FDR. The second section will focus on the argument presented by Ambrose and Brinkley, seeking to give some answers to the question of whether or not Clinton's foreign policy was shaped by his advocacy of free trade, and assess how this is evident in his use of executive orders. The third and last part will give a discussion of Clinton’s foreign-policy strategy of “democratic enlargement” as presented in chapter two, and assess where this strategy fits in among the four schools of American foreign-policy thinking, the Hamiltonians, Wilsonians, Jacksonians, and Jeffersonians, as presented by historian Walter Russell Mead in his book *Special Providence – American Foreign Policy and How It Changed the World*.³

¹ Stephen E. Ambrose and Douglas G. Brinkley, *Rise to Globalism: American Foreign Policy Since 1938*, ed. 8 (New York, NY: Penguin Books, 1997), 402

² Ibid., 406

³ Ibid.; Walter Russell Mead, *Special Providence – American Foreign Policy and How It Changed the World*, (Oxon: Routledge, Taylor & Francis Books, Inc., 2002)

3.1 Clinton's Foreign Policy and the Use of Executive Orders

When assessing whether Clinton used executive powers more frequently for foreign-policy purposes than his predecessors, it is important to define which executive orders are counted as executive orders of foreign policy, thus one needs to classify the executive orders. Mayer divides executive orders into several groups where *foreign affairs* is labeled as a group on its own, separate from executive orders in relations to war and emergency powers as well as defense and military policy. Within the group labeled *foreign affairs* Mayer has placed “orders dealing with export controls, foreign economic policy, foreign trade, foreign aid, foreign affairs and diplomatic relations generally, establishment of international or treaty-based organizations, management of territories (Philippines, Puerto Rico, the Canal Zone), and immigration.”⁴ These are the groupings which will be used as part of this section when assessing whether or not President Clinton used executive orders more frequently for foreign-policy purposes than other presidents. (Limiting the number of presidents assessed to FDR up until present.)

The data used is collected from the *Federal Register* through the American government's National Archives at www.archives.gov. Due to the inconsistency of Executive Orders made available online from the presidency of George Washington in 1789 up until Franklin D. Roosevelt's second term starting in 1937, the numbers used and analyzed are dating no further back than 1937. In addition to the inconsistency of orders listed online, one needs to keep in mind that the classification of the executive orders and what group the respective orders should be counted in is based on the author's own assessment. Therefore the numbers presented here should be considered as relative.⁵

By looking at the numbers presented in Table 1, Appendix A, one finds quite clear numbers showing which president issued the largest amount of executive orders dealing with foreign-policy issues. President Roosevelt issued 78 executive orders which are defined strictly for foreign-policy purposes during his last eight years as president. The next president in line is President Clinton who issued 62 executive orders for foreign-policy purposes during his eight years as president. As one can see from Table 1, Appendix A, even when leaving out the first three years of his presidency it is clear that in sheer numbers Roosevelt is the president who has issued the largest number of executive orders for the implementation of

⁴ Kenneth R. Mayer, *With the Stroke of a Pen – executive orders and presidential power*, (Princeton and Oxford: Princeton University Press, 2001), 80

⁵ *National Archives*, www.archives.gov

foreign policies. However, this number needs to be analyzed in relations to the total number of executive orders Roosevelt issued during the period assessed (1937-1945). Roosevelt's 78 executive orders do only constitute 3.86 percent of the total of 2019 executive orders issued in the period assessed. In contrast, President Clinton's 62 executive orders issued for foreign-policy purposes constitute 17.03 percent of his total number of executive orders issued during his presidency (364 E.O).⁶

Having issued only four executive orders less than Clinton, Truman falls third in line if only assessing the sheer numbers of orders issued are taken into account. However, due to the high number of executive orders he issued, those issued for foreign-policy purposes only constitute 5.9 percent of his total number of orders. This places him as number eight of the thirteen presidents since FDR. President Obama, who issued only fourteen executive orders in the category of foreign affairs, is number three in line as these orders constitute 12.96 percent of the total number of executive orders he issued between January 2009 and December 2011. FDR, who outnumbers every subsequent president in the number of executive orders issued both in total and those for foreign-policy purposes, is one of the presidents with the lowest percentage of foreign-policy executive orders out of the total number of executive orders issued. Based on this statistical information, it is clear that both in total number and relatively speaking Clinton used executive orders more frequently than most other U.S. presidents.⁷

3.1.1 The effect of Republican takeover

Adam L. Warber argues in his book *Executive orders and the modern presidency: Legislation from the oval office* that "presidents do not pursue policy in a vacuum," rather their policymaking is dependent on factors "such as the election cycles, public support for the president party control of Congress, and the influence of state governments."⁸ As Warber argues, "a president's decision regarding the nature of an executive order is highly dependent on the political environment."⁹ The purpose of this section, therefore, is to assess whether or not there is a difference in the frequency that Clinton used executive orders as a policy tool

⁶ "Executive Orders Disposition Tables Index", *Federal Register*, (19 December 2011) <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (9 January 2012); See also Appendix A

⁷ "Executive Orders Disposition Tables Index", *Federal Register*, (19 December 2011) <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (9 January 2012); see also Appendix A

⁸ Adam L. Warber, *Executive orders and the modern presidency: Legislation from the oval office*, (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2006), 16

⁹ Warber, 16

before and after the Republican takeover in Congress. Since the Republican takeover in Congress was a result of the 1994 mid-term elections and since the Republican majority came into effect in January 1995, this section divides Clinton's presidency into two periods from 1993 up until 1995 and from 1995 up until 2001.¹⁰

When assessing the numbers, one notices that there is a slight decline in executive orders issued on average after the Republican gained majority in Congress. Whereas Clinton issued an average of 55.5 executive orders annually during his first two years as president, he issued an average of 42.16 executive orders after the Republican takeover. The decline of 13.33 executive orders on average does to a certain degree confirm Krause and Cohen's argument that presidents use executive orders more frequently as a policy tool when they experience success in the legislative arena. As for executive orders dealing with what has been classified as foreign affairs in this section, one discovers that prior to the Republican takeover, executive orders for foreign-policy purposes constituted 24.32 percent of the total number of executive orders, whereas they only constituted 13.83 percent of the total number of executive orders issued after the Republicans took over Congress. This further confirms the thesis that the Republican takeover in Congress after the 1994 mid-term election resulted in a decline in both actual and relative numbers of executive orders issued in general and executive orders for foreign policy purposes specifically.¹¹

3.2 The Economy and Foreign Policy

Bill Clinton entered the office at a time when the world was going through big changes and the world order was out of balance. As previously stated Stephen E. Ambrose and Douglas G. Brinkley argue that "Clinton saw his primary goal as President to make the world safe for U.S. business and its global system of capital accumulation."¹² Inexperienced in the field of foreign policy, Clinton focused on domestic issues throughout his presidential campaign, winning the election on the slogan: "It's the economy, stupid!"¹³ He left foreign policy to his opponent, incumbent President George H. W. Bush, whose strength as politician and

¹⁰ Mayer, 9

¹¹ "Executive Orders Disposition Tables Index", *Federal Register*, (19 December 2011) <<http://www.archives.gov/federal-register/executive-orders/disposition.html>>, (9 January 2012); See also Appendix A; George A. Karuse and David B. Cohen, "Presidential Use of Executive Orders, 1953-1994" in *American Politics Research*, vol.25 (1997): 458-481, online via Sage publications, <<http://apr.sagepub.com>>, (22 November 2011), 462

¹² Ambrose and Brinkley, 402

¹³ P. Edward Haley, *Strategies of Dominance – the misdirection of U.S. Foreign Policy*, (Washington D.C: Woodrow Wilson Center Press, 2006), 66

president had been foreign policy. There is little doubt among scholars that Bush did a great job ending the Cold War. However, with the American economy struggling, and the fall of the Soviet Union happening only one year prior to President Bush's defeat in the 1992 election, Bush left the newly elected President Bill Clinton to face numerous challenges. This section will assess whether or not Clinton's foreign policy was shaped by his advocacy of free trade, and if so, assess how this is evident in his use of executive orders.¹⁴

During his campaign Clinton set up three foreign – policy initiatives which were meant to be his focal points as Commander in Chief: “modernizing and restructuring American military and security capabilities; elevating the role of economics in international affairs; and promoting democracy abroad.”¹⁵ Ambrose and Brinkley argue that despite these initiatives, he did not have a post- Cold War “grand design” of how to deal with the new world order. Instead, Clinton promised to face the domestic issues and a faltering national economy by letting domestic concerns dominate the post-Cold War agenda.¹⁶

The economic crisis in the U.S. was Clinton's biggest concern as he entered the Oval Office. He saw free trade as the solution to the problem and made it his foreign policy priority. This led to the implementation of “500 bilateral and regional free-trade or ‘fair-trade’ deals” during his two tenures as U.S. president. He advocated for the “democratic peace,” believing that democracies are unlikely to go to war against each other, and linked the importance of democratization to free trade. In a speech at the American University, Clinton argued for free trade as a tool in the democratization process and as vital to the national security by presenting an analogy: “Just as neighbors who raise each others’ barns are less likely to become arsonists, people who raise each others’ living standards through commerce are less likely to become combatants.”¹⁷ As the post-Cold War world was increasingly becoming smaller and succumbing to the forces of globalization, Clinton believed that securing global free trade would eventually lead to a more democratic world. John Dumbrell claims that even though Clinton was uncertain of what the best response to the increasing force of globalization was, he strongly believed “that his main task was somehow to put America ‘in the stream of history’: to grasp the opportunities of the new era [globalizing economies]; to avoid facile optimism; to reconcile national and universal interests.”¹⁸

¹⁴ Haley, 66; Warren I. Cohen, *America's Failing Empire – U.S. foreign relations since the Cold War*, (Malden, Massachusetts: Blackwell Publishing Ltd, 2005), 38

¹⁵ Ambrose and Brinkley, 398

¹⁶ Ibid., 398-399

¹⁷ John Dumbrell, *Clinton's Foreign Policy – Between the Bushes, 1992 - 2000*, (New York, NY: Routledge, 2009), 168

¹⁸ Ibid., 46

Through the advocacy and debates on free trade agreements such as NAFTA and the General Agreement on Tariffs and Trade (GATT), Clinton “linked hemispheric free trade to the march of democracy.”¹⁹

By describing the ongoing forces of globalization as “inexorable,” Clinton believed history had shown that the world would eventually become an open democratic world by the force of time.²⁰ However, Dumbrell continues, “history also needed, in the world-view of the Clinton administration, to be given a shove – and a shove in America’s direction.”²¹ Thus, by negotiating free trade agreements such as NAFTA, Clinton and his administration were giving history a shove in a direction favorable to American interests.²²

Due to the quantity of data assessed in Appendix A, the table gives us a quite superficial and general overview of Clinton’s (and other presidents’) fields of priority in the use of executive orders. The table is therefore of little use when assessing more specific aspects of the executive orders he issued. Further adding to the groupings of Appendix A, Appendix B divides the groups of Appendix A into more specific groups and adds groups for executive orders dealing with administrative aspects such as creation and administration of councils and committees for foreign-policy purposes, domestic economic administration, foreign economic administration and foreign military assistance etc. These groups contain executive orders such as *E.O 12870 – Trade Promotion Coordinating Committee* and *E.O. 12931 - Federal procurement reform*.²³ Specifying and adding to the groups in Appendix A is meant to provide an understanding of which fields Clinton’s E.Os for foreign-policy purposes were focused towards and further provide some basis when assessing how his adherence to free trade is evident in the issuance of executive orders.²⁴

As Appendix B, Table 2 shows, nearly 50 percent of Clinton’s foreign-policy executive orders were orders relating to export, foreign trade, foreign economic sanctions and general foreign economic policies. This one can argue, shows a commitment on Clinton’s behalf to economic policies as a part of foreign affairs, and reflects the focal points and foreign-policy initiatives he outlined during his presidential campaign. Moreover, when assessing the numbers of Table 1, Appendix B one discovers that the number of executive

¹⁹ Ibid., 52, 41-61

²⁰ Ibid., 46

²¹ Ibid.

²² Ibid., 41-61

²³ William J. Clinton, “Trade Promotion Coordinating Committee”, Executive Order, 30 September 1993, <<http://www.archives.gov/federal-register/executive-orders/pdf/12870.pdf>>, (3 February 2012); William J. Clinton, “Federal procurement reform”, Executive Order, 13 October 1994, <<http://www.archives.gov/federal-register/executive-orders/pdf/12931.pdf>>, (3 February 2012); *Appendix A*; Ambrose and Brinkley, 398

²⁴ *Appendix A*; *Appendix B*

orders dealing explicitly with free trade (NAFTA, GATT and other international trade organizations/agreements) are relatively low. Out of the 119 executive orders registered in Table 1, Appendix B as having foreign and/or economic relevance, one finds that despite Clinton's adherence to global free trade, only four executive orders are dealing directly with issues of free trade, constituting a percentage of 3.36 of his overall number of orders registered. Although the field of free trade is left almost untouched by Clinton's executive orders, one finds that economic issues are very well represented in executive orders. For instance Table 2 of Appendix B, shows that over 20 percent of the executive orders assessed are dealing with domestic problems in foreign countries such as Haiti, Yugoslavia, and Iran by imposing economic sanctions through executive orders, for example: *Executive Order 12959 - Prohibiting Certain Transactions With Respect to Iran*, labeled under the group "Foreign Economic Sanctions".²⁵ In addition one finds that although not dealing with free trade explicitly, a fair share of the executive orders taken into consideration here are dealing with American export and trade promotion. From Table 2 one can find that the group labeled as "Foreign Economic Administration", constituting E.Os establishing and administrating committees promoting trade and export etc., contains 9.24 percent of the orders assessed in Appendix 2.²⁶

As part of executive orders dealing with economic issues, Table 1 in Appendix B presents the group "Domestic Economic Administration" consisting of executive orders dealing with domestic economic issues and measures through the establishment and administration of committees (i.e. Executive Order 12852 - *President's Council on Sustainable Development*²⁷). This group constitutes 20.16 percent of the E.Os assessed and when assessed together with the E.Os dealing with export, trade, and those dealing with different foreign economic issues one finds that executive orders of economic nature constitute 19.78 of the total number of executive orders issued by Clinton.²⁸

²⁵ William J. Clinton, "Prohibiting Certain Transactions With Respect to Iran", Executive Order, 6 May 1995, <<http://www.gpo.gov/fdsys/pkg/FR-1995-05-09/pdf/95-11694.pdf>>, (3 May 2012)

²⁶ Appendix B

²⁷ William J. Clinton, "President's Council on Sustainable Development", Executive Order, 29 June 1993, <<http://www.archives.gov/federal-register/executive-orders/pdf/12852.pdf>>, (3 May 2012)

²⁸ Appendix B

3.3 Democratic Enlargement²⁹

Despite the widely stated adherence to domestic issues and the relatively large share of executive orders dealing with domestic and foreign economic issues, the first nine months of Clinton's presidency was marked by critical foreign-policy issues and failures that would put deep marks on the first few years of his presidency. Upon his inauguration in January 1993, American forces were already involved in several military operations abroad with the U.S. Marines entangled in Somalia, the U.S. Navy and Coast Guard upholding a quarantine of Haiti, and the U.S. Air Force ordered to Bosnia. Critics have argued that rather than presenting a new "grand design" of U.S. foreign policy, the new administration's foreign policy was concerned with "putting out fires".³⁰

In the search of what Dumbrell refers to as "the Clinton Doctrine", different concepts were debated. But by late 1993 a concept referred to as "engagement and enlargement" was winning head way.³¹ While engagement could be traced back to the phrase "enlightened engagement," as seen during Gary Hart's 1988 campaign, "enlargement" came from within the Clinton administration, and was eventually put forth as "democratic enlargement", as presented in the previous chapter. Dumbrell connects the latter part of the concept not only to Clinton's wholehearted commitment to free markets but also to the commitment to democracy-promotion. Such democracy-promotion can be tied to Clinton's stated commitment to human rights during his second term in Office. With Rwanda and the tense situation in Eastern Europe in mind, Clinton further stated the emergence of "assertive humanitarianism" as a general attitude within the American government in relation to foreign policies and intervention abroad as he spoke to NATO forces in Macedonia in 1999. Admitting to one of his biggest regrets as president after choosing not to intervene to stop the genocides in Rwanda, Clinton had come to argue that "Whether you live in Africa or Central Europe or any other place, if somebody comes after civilians and tries to kill them *en masse* because of their race, their ethnic background, or their religion, and it is within our power to stop it, we will stop it."³² Dumbrell argues that in this speech "Clinton seemed to be outlining

²⁹ Ambrose and Brinkley, 406; Dumbrell, 2009, 42

³⁰ Ambrose and Brinkley, 399-403; Dumbrell, 2009, 41-42

³¹ Dumbrell, 2009, 42

³² John Dumbrell, "Was There a Clinton Doctrine? President Clinton's Foreign Policy Reconsidered", *Diplomacy & Statecraft*, 13:2, 43-56, 2002, <<http://www.tandfonline.com/doi/abs/10.1080/714000309#preview>> (18 January 2012), 10

a near-indiscriminatory doctrine of intervention for humanitarian ends.”³³ The American foreign policy elite had developed an attitude of “liberal hawkism,” arguing that if necessary, American use of force should be implemented in order to stop severe human rights violations such as the massacres that had been shocking the world during the 1990s.³⁴

3.3.1 Democratic enlargement in American foreign-policy thinking

Providing a historical perspective on American foreign affairs, Walter Russell Mead argues that Americans have had “four basic ways of looking at foreign policy, which have reflected contrasting and sometimes complementary ways of looking at domestic policy as well” in his book *Special Providence – American Foreign Policy and How It Changed the World*.³⁵ These four groups have been named by Mead after four figures in American history and are called the Hamiltonians, Wilsonians, Jeffersonians and Jacksonians. They all constitute different ideas of what America’s role in the world ought to be, as seen through the history of the United States.³⁶

While Dumbrell labels the concept of “democratic enlargement” as neo-Jeffersonian, coining the Wilsonian belief in fostering democracy and markets” with “more traditional geopolitical interests”, Ambrose and Brinkley argue against the involvement of Wilsonian ideals in Clinton’s concept.³⁷ Recognizing these different views on the policies and ideals behind the concept of “democratic enlargement”, this section will explore how the Clinton administration’s foreign policy fits in among these four basic America foreign – policy views as presented by Mead.³⁸

The Hamiltonians emphasize the importance of globalization and the economic aspects of foreign policy. The main idea behind their foreign – policy view is that there should be “a strong alliance between national government and big business”, as they emphasize this tie “as the key to domestic stability and to effective action abroad.”³⁹ In order to achieve their goals Hamiltonians advocate for the importance of the U.S. to be “integrated into the global economy on favorable terms.”⁴⁰ As the Hamiltonians, the Wilsonians favor globalization and an active role abroad for the American government. However, rather than

³³ Dumbrell, 2002, 10

³⁴ Ibid., 10; Dumbrell, 2009, 44; William J. Clinton, *My Life*, (New York, NY: Alfred A. Knopf, 2004), 581

³⁵ Mead, xvii

³⁶ Ibid.

³⁷ Dumbrell, 2002, 42; Ambrose and Brinkley, 406

³⁸ Mead

³⁹ Ibid., xvii

⁴⁰ Ibid. xvii, 104-106

promoting free trade as the Hamiltonians, Wilsonians believe in the moral obligation and responsibility of the United States “in spreading American democratic and social values abroad,” emphasizing that it is in the national interest to be “creating a peaceful international community that accepts the rule of law.”⁴¹

While both Hamiltonians and Wilsonians emphasize the importance of an active U.S. government abroad, Jeffersonians tend to be more skeptical towards heavy involvement abroad as this might increase the risk of becoming entangled in war. Rather than spreading democracy abroad, the government should focus their foreign policy on “safeguarding it at home.”⁴² Last but not least there is the group that Mead refers to as the Jacksonians who believe that “the most important goal of the U.S government in both foreign and domestic policy should be the economic well-being of the American people.”⁴³ The U.S. should not be policing the world but should stay away from interfering in foreign conflicts. However, if other nations are urging a war with the U.S., Jacksonians believe that the only way out is fighting for victory.⁴⁴

At first glance, Clinton’s foreign policy or rather the non existence of a viable foreign policy, seems to place him among the group of thinkers who believe that the main focus of the government should be domestic, and as the Jacksonians emphasize, focus on the economic well-being of the American people”.⁴⁵ As stated above, Clinton’s main focus during his campaign was the domestic situation as the nation faced economic difficulties affecting a large segment of the American population. Facing no real threats abroad, Clinton argued for the need to deal with the domestic issues such as the economy first, rather than for America to be policing the world dealing with political unrest and wars across the globe. The main focus both domestically and abroad should be the economy. However, according to Mead, contrary to the globally oriented Hamiltonians and Wilsonians, and despite their differences on many issues the Jacksonians and Jeffersonians are “united behind the belief that globalism went too far.”⁴⁶ Thus, one can argue that the foreign policy goals constituting Lake’s “democratic enlargement” to a certain degree contradict the values presented by Jacksonians and Jeffersonians. This is further reflected in the four main points (as presented by Ambrose and Brinkley) constituting Lake and Rosner’s concept, which focuses on the U.S. taking an active

⁴¹ Ibid., xvii, 134-135, 139-140, 172

⁴² Ibid., xvii, 174-178, 186-189

⁴³ Ibid., xvii

⁴⁴ Ibid., 237-238

⁴⁵ Ibid., xvii

⁴⁶ Ibid., 268

part in the globalization process, pointing it in a direction favorable for America.⁴⁷

The political commitment to establish a community of free trade on the international arena has been connected to democracy-promotion by more than the mere name of Clinton's foreign – policy concept “democratic enlargement”. On several occasions did Clinton referred to his adherence to the concept of the democratic peace as a valuable foundation for the world order arguing that democratic countries providing for each other through an open and globalized economy are less likely to go to war against each other. Further, as the 1990s moved along and as Clinton entered his second period as U.S. President, he embraced the importance of human rights and humanitarian intervention, which one can argue fits along the line of the Wilsonian view on foreign policy emphasizing the responsibility of “creating a peaceful international community that accepts the rule of law.”⁴⁸

Assessing Clinton's foreign policy, Dumbrell argues that the concept of “enlargement’ embodied the commitment to expanding free markets and to democracy-promotion. It bridged traditional Wilsonianism and the Kantian notion of the democratic peace, under which democracies are seen as unlikely to go to war with one another.”⁴⁹ Ambrose and Brinkley agree with Dumbrell when arguing that Clinton's main foreign – policy concern was to open up world markets in order to achieve favorable terms for American business, thus helping the American economy flourish. This pro-business attitude one can argue reflects the Hamiltonian foreign – policy view which is emphasizing the need for the government to be advocates for the interests of big business, and seem to constitute much of what Clinton chose to focus on during the first few years of his presidency. However, in contrast to Dumbrell, Ambrose and Brinkley goes on to claim that nowhere does Lake and Rosner's blueprint take into consideration the Wilsonian idealist beliefs that the United States has a moral obligation in spreading “constitutional democracy and human rights” in the world.⁵⁰ Dumbrell on the other side, argues for the commitment to Wilsonianism and claims that Anthony Lake when “describing ‘democratic enlargement’ in September 1993, (...) outlined a neo-Jeffersonian unity of ideals and interests; the policy would ‘combine our broad goals of fostering democracy and markets with our more traditional geopolitical interests’”.⁵¹

Despite Ambrose and Brinkley's argument against Wilsonian involvement in the outline of the enlargement concept, one finds that Lake does in fact give direct references to

⁴⁷ Ambrose and Brinkley, 398, 406

⁴⁸ Mead, xvii; Dumbrell, 2009, 41-61

⁴⁹ Dumbrell, 2009, 42

⁵⁰ Ambrose and Brinkley, 406; Mead, xvii, 139-140

⁵¹ Dumbrell, 2009, 42

Woodrow Wilson and his belief in the democratic peace as an essential foundation for American security and prosperity, in his speech *From Containment to Enlargement*, given at the School of Advanced International Studies at Johns Hopkins University, Washington D.C., in late September 1993. Even though Lake does not promote democracy building along Wilson's moral line, he further emphasizes democracy promotion as an essential part of "enlargement" and Clinton's foreign policy. This is further recognized in Lake and Rosner's blueprint which contains the word "democracy" in all of the four points which Ambrose and Brinkley present as the important focal points of the concept. The Wilsonian imprint on the enlargement strategy is further enhanced by the last point on the blue print, stating that the fourth essential goal of the strategy is to "help democracy and market economies take root in regions of greatest humanitarian concern."⁵² This fourth point is further elaborated by Lake himself in his speech where he argues that one needs to interpret democracy broadly, not only to include elections but equally important aspects such as human rights. Humanitarian concerns are at the core of the Wilsonian ideology and an important aspect of Clinton's foreign – policy strategy as this according to Lake "can stimulate democratic and market development in many areas of the world."⁵³ However, Lake is careful not to generalize when referring to U.S. involvement in humanitarian crisis and emphasizes the need to restrict involvement abroad to areas where the U.S. can make a difference and have an interest. Hence, humanitarian involvement is directly connected to the promotion of democracy and market economies.⁵⁴

Recognizing a Wilsonian "link" in Lake's description of the enlargement strategy is not meant to dismiss the entire argument put forth by Ambrose and Brinkley. One can argue as they argue, that for Clinton "a politically viable foreign policy had to be centered upon protecting primary U.S. strategic and economic interests."⁵⁵ However, this does not necessarily leave out the Wilsonian adherence to democracy-building as a part of enlargement and Clinton's foreign policy. By looking back on Clinton's statements in relations to the concept of "democratic peace," one can argue that giving support to and committing to spreading democracy around the world might as well be a part of U.S.'s "strategic and economic interests."⁵⁶ Mead, who supports the notion of a Hamiltonian oriented Clinton

⁵² Ambrose and Brinkley, 406

⁵³ Anthony Lake, "From Containment to Enlargement, 21 September 1993", *The DISAM Journal*, Winter 1993/94, 68-78, <http://www.disam.dsca.mil/pubs/Vol%2016_2/Lake.pdf>, (19 January 2012), 71, 75; Ambrose and Brinkley, 406

⁵⁴ Lake, 75-76

⁵⁵ Ambrose and Brinkley, 406

⁵⁶ Ibid.

administration, argues that in the post-Cold War world one can find that both Hamiltonians and Wilsonians were globalists, “believing that the construction of a global order was the fundamental task of American foreign policy.”⁵⁷ Thus, arguing that Clinton’s foreign policy was influenced by a Wilsonian foreign policy view does not necessarily dismiss wide spread Hamiltonian influence.⁵⁸

Clinton’s commitment to democracy-promotion and his preference for multilateral agreements when conducting foreign policies would place him within the group of Wilsonian thinkers. Clinton showed great adherence to economic multilateral agreements such as NAFTA and organizations such as WTO and IMF. However, despite these important factors one needs to keep in mind the limits on Clinton’s engagement abroad. Economic free trade was perceived by Clinton as a vital aspect of economic revitalization in the U.S., with the U.S. engaging in multilateral agreements and organizations with countries they found to be of economic and geopolitical interest. Mexico can be argued to be a country of both economic and geopolitical interest, where free trade could spur the opening of Latin American markets and eventually spreading democracy in the region. Further, as discussed in chapter two, Clinton’s engagement in U.N. led peacekeeping operations and humanitarian interventions were severely restricted after the Somalia incidence in the fall of 1993 through the Presidential Decisions Directive 25. With no geopolitical interests in Rwanda, Clinton decided to remain inactive despite numerous reports of genocides taking place and U.N. led peacekeeping operation being implemented in the region.

When concluding, one can argue that by assessing Clinton’s foreign policy in relations to the four groups of foreign policy views as put forth by Mead, one finds that aspects from different groups might be used to describe the foreign – policy attitude as both democracy-promotion and free trade are prominent along with the limitation of geopolitical interests. However, the most prominent aspects of the concept of “democratic enlargement” seem to be globalization through the promotion of democracy and free markets, merging both Wilsonian idealism and Hamiltonian market economic orientation. Coined together with the emphasis on the importance of limiting involvement to areas of geopolitical interest shown by the Clinton administration and a reluctant to join the U.N in operations abroad, the argument I regard as most convincing is that “democratic enlargement” as the Clinton administration’s foreign policy strategy is neo-Jeffersonian in nature, as Dumbrell claims.⁵⁹

⁵⁷ Mead, 268

⁵⁸ Ibid., xvii, 268 - 309

⁵⁹ Dumbrell, 2002, 42

3.4 Conclusion

As the discussions at the beginning of this chapter shows, Clinton used executive orders for foreign – policy purposes to a far greater extent than most previous presidents relatively speaking. With Clinton emphasizing the economy as a vital part of both domestic and foreign policies, one finds that this is very much evident in his use of executive orders, as the executive orders dealing with economic issues constitute close to twenty percent of the total number of executive orders issued by Clinton during the eight years of his presidency. Moreover the assessment also states that he did not use executive orders more frequently when the opposition held the majority in Congress. Rather, Clinton issued fewer executive orders on average annually after the Republican takeover in Congress in 1995. Thus, the assumption presented in chapter one of presidents using executive orders to circumscribe the Congress when in opposition, is not applicable to Clinton’s presidency. Finally one can argue from the previous discussions that Clinton’s foreign policy constitutes different aspects of foreign – policy thinking as reflected in the American society. Eventually Clinton’s promotion of democracy and free trade together with the importance of geopolitical interests and his reluctant to get engaged in U.N. led operations, places the Clinton administration’s foreign policy and the concept of “democratic enlargement” within the neo-Jeffersonian group of thinkers.

Humanitarian Interventions as Part of American History

By assessing history President Harry Truman argued that “no decision affecting the people should be made impulsively, but on the basis of historical background and careful consideration of the facts as they exist at the time.”¹ Realizing this, President Truman looked back at history and found a parallel to the communist aggression in Korea in the 1930s Nazi aggression. Fearing that the spread of Communism would lead to a third World War, Truman decided to authorize the use of force by American troops in Korea. In the book, *Making War, Thinking History: Munich, Vietnam, and Presidential Uses of Force from Korea to Kosovo*, Jeffery Record argues that American presidents are influenced by several factors when deciding whether or not to implement policies. In the case of military interventions these are factors such as a president’s “personality, professional military advice, perceived stakes, anticipated enemy responses, and domestic political considerations.”² In addition to these Record argues that presidents are influenced by ideas and experiences from previous interventions, as seen through history, such as with Truman’s decision to use force in Korea. In the introduction of his book, *Strategies of Dominance – The Misdirection of U.S. Foreign Policy* Professor of International Relations P. Edward Haley states that “[t]he present is created when continuities from the past collide with the unexpected from the future.”³

History is used by many presidents in order to build momentum behind an argument or their claim of power. As argued in chapter one, presidents derive their power to issue and the legal basis for executive orders from the Constitution, statutes and from what some argue to be the powers inherent in the presidency. In addition to these sources of power, Mayer argues that historical evidence and practice by previous presidents "matters because of the importance of precedent to the expansion of presidential power,(...) often through executive

¹ Jeffrey Record, *Making War, Thinking History, Munich, Vietnam, and Presidential Uses of Force from Korea to Kosovo*, (Annapolis, Maryland: Naval Institute Press, 2002), 1-2

² Ibid., 2

³ P. Edward Haley, *Strategies of Dominance – The Misdirection of U.S. Foreign Policy*, (Hamden Station: The Johns Hopkins University Press, 2006), 1; Record, 2002, 1-2

orders.”⁴ In some instances legal basis for an executive order might be found and granted from the Supreme Court by referring to previous practice by presidents that are “known to and acquiesced in by Congress”.⁵ Further, he claims that “each time a president relies on executive prerogative to take some type of action, it makes it easier for a future president to take the same (or similar) action.”⁶ This is a consequence of the vaguely defined boundaries between legislative and executive powers. Critics argue that by accepting repeated congressional acquiescence in a field as basis for executive use of powers may lead to a dangerous increase in originally illegitimate presidential powers “simply because they have exercised it enough times.”⁷ This can be seen as one way of how history does matter as a part of presidential decision making and might help us understand the importance of assessing history in order to understand Clinton’s conduct of foreign affairs.

The following section will define humanitarian interventions as applied in this thesis; it will provide an assessment of how humanitarian interventions have been perceived and conducted during the twentieth century as part of American foreign policy in order to put Clinton’s conduct of humanitarian intervention in a larger perspective. Before concluding some statements made by the political scientists Jeffery Record, Richard N. Haass, and John Dumbrell, in relation to the discussions on humanitarian interventions as wars of necessity or wars of choice, will be considered.

4.1 Humanitarian Interventions

4.1.1 Defining humanitarian interventions

There is no definition of humanitarian intervention accepted by the international community as a whole. However, the concept of humanitarian intervention can be found within different academic fields such as international law and international affairs, political science and in the field of ethics. Even though the definitions used by scholars might vary, there are some common thoughts among them and within the international community on what this particular concept of international intervention constitutes. In the essay *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, political scientist J. L. Holzgrefe defines humanitarian intervention as

⁴ Kenneth R. Mayer, *With the Stroke of a Pen – executive orders and presidential power*, (Princeton and Oxford: Princeton University Press, 2001), 56

⁵ Ibid.

⁶ Ibid.

⁷ Ibid., 58, 54-58

the threat or use of force across state borders by a state (or a group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.⁸

Holzgrefe acknowledges that by defining humanitarian intervention in this way, he excludes some features commonly associated with the concept. These are “non- forcible interventions such as the threat or use of economic, diplomatic, or other sanctions; and forcible sanctions aimed at protecting or rescuing the intervening state’s own nationals.”⁹ However, the definition presented by Holzgrefe does epitomize the humanitarian interventions launched during the 1990s. Therefore for the purpose of this thesis, the definition presented by Holzgrefe will be applied as the following sections and chapter explores different aspects related to American conduct of humanitarian interventions.

Humanitarian interventions are by the mere nature of the intervention different from a classical intervention. The most important feature of a humanitarian intervention is the reasoning behind the decision to intervene. One can argue “that a state or group of states which are considering the conduct of humanitarian intervention focus their reasons for intervening primarily on the effect a conflict has on civilian populations instead of their own national interests.”¹⁰ This is not to say that political and/or national interests on behalf of the intervening state(s) are not present when a state decides to intervene in another state’s affairs.

Depending on the perceived legitimacy of the intervention, a foreign government can raise their public approval ratings domestically as well as internationally by conducting a humanitarian intervention relieving human suffering abroad. Thus, how virtuous as it might seem one can argue that political interest might be present at the core of a decision to intervene. Moreover, by accepting the use of military force within the parameters of humanitarian interventions as a legitimate part of international affairs, one should also consider the fact that claimed humanitarian interventions might be a disguise for other political motives where a state or a group of states conducts illegitimate operations, violating another state’s sovereignty while claiming the legitimacy of humanitarian intervention.¹¹

⁸ J. L. Holzgrefe, “The Humanitarian Intervention Debate,” in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane, (Cambridge, UK: Cambridge University Press, 2003), <<http://catdir.loc.gov/catdir/samples/cam034/2003269355.pdf>>, (10 November 2011), 18

⁹ “Crimes of War – Educator’s Guide: Humanitarian Intervention”, *Human Rights Education Associates (HREA)*, 1997-2007, <http://www.hrea.org/index.php?base_id=132>, (10 November 2011); Holzgrefe, 18

¹⁰ “Crimes of War “, *HREA*

¹¹ Ibid.; David Rieff, “Humanitarian Intervention”, 2011, *Human Rights Education Associates (HREA)*, <<http://www.crimesofwar.org/a-z-guide/humanitarian-intervention/>>, (11 November 2011)

4.1.2 Humanitarian interventions in American history -American exceptionalism

As stated in chapter two, American exceptionalism is an important part of American foreign – policy thinking. It has roots going all the way back to the arrival of the British Puritans in the seventeenth century. However, some scholars argue that the twentieth century saw an increased importance of American exceptionalism as a part of the foreign – policy discourse as world affairs came closer to the American continent through involvement in two world wars. Therefore, this section will give an assessment of American exceptionalism as part of the twentieth century’s foreign policy in order to provide an understanding of how humanitarian interventions has been perceived in American history as part of the American foreign policy tradition.¹²

Svein Melby argues that leading up to the 1940s the American foreign policy discourse was marked by a reluctance to get involved in world affairs, an attitude which is characteristic for the “City upon a Hill” direction of American exceptionalism as stated in chapter two. However, as Hilde E. Restad argues agreeing with Henry Kissinger, the U.S. government albeit not involving in European affairs, participated actively on the international scene as part of the nineteenth century’s territorial expansion, which was manifested through the 1823 Monroe Doctrine. Restad further claims that rather than taking turns at the forefront of the foreign policy scene, the aloof voices were to a large degree silenced as part of the American Revolution. Through a policy of “unilateral internationalism”, Restad argues the “United States has maintained as much maneuverability as possible while *always* engaging with other countries”¹³.

During his presidency (1913-1921) Woodrow Wilson put large efforts into promoting American ideals of democracy and the American moral obligation to spread democracy and American values around the world. He advocated for the need to put a halt to the “dominant position of classic power politics in world affairs” and “make room for an international system of sovereign nations and American values.”¹⁴ Melby argues that President Wilson’s “missionary” attitude in foreign policy “represents an historical high in relations to the

¹² Godfrey Hodgson, *The Myth of American Exceptionalism*, (New Haven: Yale University Press, 2009), 26, 21-27; Ivo H. Daalder and James M. Lindsay, *America Unbound – The Bush Revolution in Foreign Policy*, (Washington, D.C.: Brookings Institution Press, 2003), 5; Henry Kissinger, *Diplomacy*, (New York, NY, Simon & Schuster: 1994), 18

¹³ Hilde E. Restad, “U.S. foreign policy traditions: Multilateralism vs. unilateralism since 1776”, *Defence and Security studies*, 3, 2010, (Norwegian Institute for Defence Studies, 2010), 4

¹⁴ Svein Melby, *Amerikansk Utenrikspolitikk*, (Norsk Utenrikspolitisk Institutt (NUPI), TANO: 1995), Online via Nasjonalbiblioteket, NBdigital <http://urn.nb.no/URN:NBN:no-nb_digibok_2008061604012> (14 February 2012), 15

‘Manifest Destiny’ direction’s influence in American foreign policy.”¹⁵ However, the failure to achieve a majority in Congress in favor of joining the League of Nations might be explained both by the conventional aloof line of American exceptionalism and as Restad and Professor of Politics and International Affairs, G. John Ikenberry argue, by the American reluctance to join in multilateral cooperation abroad.¹⁶

From the assessment above, then, one can argue that Franklin D. Roosevelt’s engagement in the Second World War turned the tide on both isolationism and the reluctant attitude towards multilateralism. The end of the war saw a European continent in ruins and a changed America which started a large – scale international engagement to restore Europe and reestablish order in the world. As a part of the peace effort American political leaders placed the U.S in the driver’s seat as world leaders came together in order to establish the United Nations. Despite the broken record of engaging in international organizations, by taking the lead in the establishment of the U.N. the United States was eventually able to act multilaterally on its own terms.¹⁷

The creation of the United Nations was a response to the horrors of the Second World War and the ineffectiveness of the League of Nations to prevent yet another world war from happening. The Charter of the United Nations outlines the purpose of the organization and explicitly states that the U.N. is established in order

to save succeeding generations from the scourge of war, (...) to reaffirm faith in fundamental human rights (...) to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.¹⁸

In short, the organization was established “to promote peace and stability, recognize the importance of sovereignty, especially for newly independent nations or those seeking independence from colonizers.”¹⁹ The latter should prove to constitute a big challenge as the

¹⁵Ibid., 26

¹⁶Ibid., 23; Hilde E. Restad, *Identity and Foreign Policy: the Case of American Exceptionalism and Unilateralism*, (Virginia: Woodrow Wilson Department of Politics, University of Virginia, 2010), online via ProQuest <<http://search.proquest.com/docview/857970390>> (27 February 2012), 5; Restad, 2012, 5; Restad, *U.S. foreign policy traditions*, 2010, 3-5; G. John Ikenberry, “Is American Multilateralism in Decline?”, in *Liberal Order and Imperial Ambitions – Essays on American Power and World Politics*, ed. G. John Ikenberry, (Cambridge: Polity Press, 2006), 270

¹⁷Melby, 1995, 23-27; Hodgson, 21-27; Kissinger, 1994, 18

¹⁸UN, *Charter of the United Nations, Preamble*, the United Nation, 1945, <<http://www.un.org/en/documents/charter/index.shtml>>, (7 February 2012)

¹⁹Jayshree Bajoria, “The Dilemma of Humanitarian Intervention”, *Council on Foreign Relations*, (24 March 2011) <<http://www.cfr.org/human-rights/dilemma-humanitarian-intervention/p16524#p1>>, (8 February 2012)

twentieth century moved towards the end.

Fundamental human rights were emphasized as an important aspect of the organization from the start. References to this commitment can be found already in the preamble of the “Charter,” stating that “the peoples of the United Nations is determined (...) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”²⁰ This commitment to human rights was further emphasized in 1948 as the Genocide Convention was signed into international law as part of the Declaration of Human Rights stating that “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”²¹ The Convention came into force on January 12, 1951. However, even though the United States was among the signatory parties and signed the Genocide Convention on December 11, 1948, it was not made a part of American law until it was ratified by Congress and signed by President Ronald Reagan on November 25, 1988. The forty – year delay on ratification was accompanied by a list of reservations and understandings emphasizing and securing U.S. sovereignty.²²

The reluctance to ratify the Genocide Convention is reflected in the American attitudes toward involvement on the international scene. Some scholars, including Michael Ignatieff, argue that the insistence on reserving American citizens or U.S. practices from being subjects under the Genocide Convention, especially in relation to the jurisdiction of the International Criminal Court, exemplifies the notion by Americans of the United States as an exceptional nation. This he argues, is due to the fact that the American government evaluates and judges other countries by the Genocide Convention and the International Criminal Court, but refuses it to have jurisdiction over American citizens. Moreover, the significance of the U.S. Constitution as supreme to the American people is an aspect that needs to be taken into consideration.²³

The second paragraph of Article VI, of the U.S. Constitution is commonly referred to as the “Supremacy Clause”. Stating that “The Constitution, and the Laws of the United States

²⁰ UN, *Charter of the United Nations, Chapter I, Article 2, Section 7*, (the United Nation, 1945), <<http://www.un.org/en/documents/charter/index.shtml>>, (8 February 2012)

²¹ UN, “Convention on the Prevention and Punishment of the Act of Genocide”, *Human Rights*, (Paris, 1948), <http://treaties.un.org/doc/Treaties/1951/01/19510112%2008-12%20PM/Ch_IV_1p.pdf>, (8 February 2012)

²² UN, “Chapter IV – Human Rights”, *UN Treaty Collection*, (status at 07.02.2012), <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en>, (8 February 2012)

²³ Michael Ignatieff, *American Exceptionalism and Human Rights*, (Princeton University Press: 2005), 3-5

(...) shall be the supreme Law of the Land”, this paragraph is read to mean that no law is above the Constitution or the federal laws implemented by the government.²⁴ The nature of this paragraph, then, has led to widely held reluctance among American presidents and Congress to sign any international treaty or law which might infringe on the supremacy of the Constitution. Put in connection to events of the twentieth century, the “Supremacy Clause” can help explain the failure to join the League of Nations and later, the prolonged process of signing and ratifying the Genocide Convention. Moreover, since there had been no changes to the nature and jurisdiction of the Declaration of Human Rights between 1948 and 1988, the signing by Reagan and the congressional ratification was accompanied by several restrictions and statements of understanding, securing the supremacy of the U.S. Constitution and American laws.²⁵

A somewhat different but equally interesting explanation can be found in the article *Foreign Policy as Social Work*, where political scientist Michael Mandelbaum argues that “historically the foreign policy of the United States has centered on American interests, defined as developments that could affect the lives of American citizens.”²⁶ He further argues that it has been a general sentiment in American politics and public, that unless American interests and/or national security is threatened there is no reason why American lives and money should be put on the line in order to prevent hostilities in a country far from American shores. This attitude was manifested in the early years of the nation as George Washington in his farewell speech to the nation emphasized that “it is our true policy to stay clear of permanent alliance with any portion of the world.”²⁷ Thomas Jefferson further emphasized this as he spoke to the nation upon his inauguration, stating that America’s relations to the world should constitute “Peace, commerce and honest friendship with all nations – entangling alliances with none.”²⁸ Fearing that entangling alliances would lead the United States into unnecessary wars and the loss of sovereignty, the words of these two early presidents have been carried into the present and might serve to explain some of the failure to join the League of Nations and the reluctance to ratify international laws and conventions.

²⁴ U.S. Constitution, art. 4

²⁵ UN, “Chapter IV – Human Rights”, *UN Treaty Collection*, (status at 07.02.2012), <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en>, (8 February 2012); “Supremacy Clause”, *West's Encyclopedia of American Law*, 2nd ed., (The Gale Group, Inc. 2008), <<http://legal-dictionary.thefreedictionary.com/Supremacy+Clause>>, (24 February 2012)

²⁶ Michael Mandelbaum, *Foreign Policy as Social Work*, *Foreign Affairs*, Vol. 75, (Jan/Feb., 1996): 16-32, online via JSTOR, <www.jstor.org/stable/20047465>, 17

²⁷ David Formkin, “Entangling Alliances”, *Foreign Affairs*, Vol. 48, (July, 1970): 688-700, online via Hein Online Law Library, <<http://www.heinonline.org/HOL/Index?index=journals%2Ffora&collection=journals>>, (8 February 2012), 688

²⁸ Ibid.

Since the Genocide Convention was not ratified until late 1988, there is reason to agree with Professors of International Relations John Western and Joshua S. Goldstein as they claim that “modern humanitarian intervention was first conceived in the years following the Cold War.”²⁹ However, the post - Second World War era saw several large – scale military interventions on behalf of the United States. This turn towards a broad internationalist attitude in American foreign policy one can argue, is evidence for the continued and perhaps increased importance of the “Manifest Destiny” course of American exceptionalism as a part of the American foreign policy discourse. Moreover, one can argue that the “Manifest Destiny”-idealism was an important foundation for the containment policy which grew out of an increasingly tense relationship with the Soviet Union. At the time when the world was dealing with the consequences of a second world war, the United States watched with worry as the Soviet Union with its totalitarian leader Stalin was seeking to make headway throughout the world. Fearing the eruption of a third world war, Truman saw the North Korean attack on South Korea as a possible danger to the world peace if Communism was not prevented from spreading in Asia. Thus, the North Korean aggression “ultimately served to validate the strategy of containment,” and in doing so, spurring the Cold War.³⁰

The Cold War world was a bipolar world, where the dominant thoughts of foreign policy were concerned about containment, nuclear deterrence, and a global zero sum contest between two superpowers. Consequently, the United Nations’ efforts to keep the peace and prevent war, and essentially its role in the international community, were severely curbed as the onset of the Cold War created a U.N. Security Council where the permanent members were vetoing each other on every opportunity they had.³¹

With Communism perceived as the ultimate threat to world peace, American foreign policy concentrated on containing it from spreading. As such, containment became a part of the American responsibility of spreading American ideals and values in the world. Dwight Eisenhower declared during his presidential campaign in 1952 that “We can never rest (...) until the enslaved nations of the world have in the fullness of freedom the right to choose their

²⁹ John Western and Joshua S. Goldstein, “Humanitarian Intervention Comes of Age – Lessons From Somalia to Libya”, *Foreign Affairs*, vol.90, (Nov/Dec, 2011): 48 – 59, online via Hein Online Law Library, <<http://www.heinonline.org/HOL/Page?handle=hein.journals/fora90&id=1024&collection=journals&index=journals/fora>>, (9 February 2012), 49

³⁰ Tim Kane, “Global U.S. Troop Deployment, 1950 – 2003.”, *The Heritage Foundation*, (24 October 2004), <<http://www.heritage.org/research/reports/2004/10/global-us-troop-deployment-1950-2003>>, (8 February 2012)

³¹ Ivo H. Daalder, “Knowing When To Say No: The Development of US Policy for Peacekeeping”, in *UN Peacekeeping, American Politics, and the Uncivil Wars of the 1990s*, ed. William J Durch, (London, 1997), 35; Record, 34; Haley, 5; Melby, 1995, 27

own path, for then, and only then can we say that there is a possible way of living peacefully and permanently with Communism in the world.”³² As the Korean War came to an end in 1953, the “Communist scare” led to further American involvement in Asia from 1955. Then senator, John F. Kennedy declared in 1956 that “Vietnam represents the cornerstone of the Free World in Southeast Asia.”³³ Lyndon B. Johnson added to Kennedy’s view as he told his Secretary of Defense Robert McNamara that in case of U.S. withdrawal from the area “the dominoes would fall and a part of the world would go to the Communists.”³⁴ Involvement led to fully-fledged warfare as Congress provided President Johnson with the powers “to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression” through the Tonkin Gulf Resolution in 1964.³⁵ This transfer of power was carried into the 1970s as Richard Nixon ordered troops to move into the neutral territory of Cambodia. American military interventions Southeast Asia can be considered as classical interventions as the containment of Communism was perceived as essential for American national security. Involvement in Asia was justified through the adherence to “Manifest Destiny” and American exceptionalism, and does as Restad argues portray American foreign policy as one of unilateralist internationalism.³⁶

Viewing America in the light of exceptionalism, political and military leaders during the 1950s, - 60s, and 70s, saw America as the “leader of the free world”, urging for widespread American military involvement on the international scene. However, freeing the “enslaved” peoples of the world as Eisenhower urged during his campaign was concerned with spreading democracy defined as the freedom to choose the American way over Communism, rather than the much broader definition later presented by Anthony Lake as constituting free elections together with market economy and universal human rights. Although one can find a clear exceptional attitude based on the belief in American “Manifest Destiny” as a part of the reasoning behind military interventions in the decades succeeding the Second World War, these were by no means humanitarian in nature.³⁷

The years that followed the Vietnam War were marked by what Record refers to as the

³² Stephen E. Ambrose and Douglas G. Brinkley, *Rise to Globalism: American Foreign Policy Since 1938*, ed. 8 (New York, NY: Penguin Books, 1997), 127

³³ Record, 55

³⁴ Ibid., 56

³⁵ U.S. Congress, “The Tonkin Gulf Resolution”, 1964, *Our Documents*, <<http://www.ourdocuments.gov/doc.php?flash=true&doc=98&page=transcript>>, (8 February 2012)

³⁶ Melby, 1995, 27; Restad, 2012, 5

³⁷ Anthony Lake, “From Containment to Enlargement, 21 September 1993”, *The DISAM Journal*, Winter 1993/94, 68-78, <http://www.disam.dsca.mil/pubs/Vol%2016_2/Lake.pdf>, (19 January 2012), 71; Trevor B. McCrisken, “Exceptionalism”, *Encyclopedia of the New American Nation*, <<http://www.americanforeignrelations.com/E-N/Exceptionalism.html#b>>, 2012, (2 February 2012)

“Vietnam syndrome” described as “an acute aversion to even indirect military intervention in foreign wars – especially in the Third World” which “gripped America’s political and military leadership” along with strong opposition towards military involvement in the public.³⁸ It might seem as if American policy makers turned away from the attitude of an exceptional American nation as a response to the failure in Vietnam. However, there is reason to argue that rather than dismissing the importance of American exceptionalism in the foreign policy field there was a turn from an internationalist attitude of America as the “leader of the free world” to the more aloof attitude where America as an exceptional nation should be leading by example, as a “City upon a Hill” through a new adherence to the “exemplary nation”-direction of American exceptionalism. Proponents of this aloof line of exceptionalism saw Nixon and Kissinger’s large-scale power politics and secrecy in conducting American foreign affairs as clear signs of European influences, thus undermining core values and ideals of the American system. As a result, the use of American forces abroad was severely restricted going into the 1980s.³⁹

However, with the presidency of Ronald Reagan one saw a tendency in American foreign policy of increased emphasis on internationalism and a renewed belief in America’s “Manifest Destiny” as Reagan ordered the use of force in several countries such as Libya, Lebanon and Grenada. Melby argues that Reagan’s engagement in international affairs is a clear example of the relevance of American exceptionalism and “Manifest Destiny” in modern America. Moreover, he claims that no other president “has put such an emphasis on the U.S.’s overarching idealistic commitments in their foreign policy reasoning than Reagan.”⁴⁰ With Reagan’s intervention in Lebanon, American interest for humanitarian intervention was emerging as part of the responsibility of spreading American values and ideals. According to Record, Reagan’s intervention and a re-intervention “began with the best of humanitarian intentions” as peacekeeping missions in order to prevent Israeli aggression and Christian militia massacres of civilians in the refugee camps.⁴¹ However, the peacekeeping operation got out of hand as the American presence “provoked deadly retaliation,” and the goal of “a peaceful Lebanon free of all foreign forces” withered away.⁴²

As George H. W. Bush was getting comfortable in the presidential seat by the end of the 1980s, the Cold War was drawing to an end and the Soviet Union was crumbling. The

³⁸ Ambrose and Brinkley, 95-97, 114, 127-129; Record, 34-36, 55-59, 79

³⁹ Ambrose and Brinkley, 95-97, 114, 127-129; Record, 34-36, 55-59, 79

⁴⁰ Melby, 1995, 27; Record, 81

⁴¹ Record, 81

⁴² Ibid.

United States was emerging as the sole superpower and with that came a new role on the international scene. Political scientists P. Edward Haley argues that with the end of the Cold War

American decision makers and opinion leaders adopted a new foreign policy paradigm, composed of assumptions drawn from the past, such as American exceptionalism, democratization, economic sanctions, and coercive diplomacy, and others that came out of the unexpected end of the Cold War, such as American primacy, bandwagoning, and globalization.⁴³

The emphasis of American exceptionalism in the post-Cold War paradigm and the emergence of a “new world order” in the post-Cold War period, also emphasized in McCrisken’s definition of American exceptionalism, are reinforcing the importance of assessing humanitarian interventions in relation to the concept of American exceptionalism.⁴⁴

As the incumbent president at the time, Bush was forced to deal with increasing instability resulting from an altered world order. As previously stated Bush was experienced in the field of foreign affairs and his values were described as being shaped by “militant Republican internationalism.”⁴⁵ Despite the fact that Bush held office for only one period, he managed to involve American forces in two large-scale military interventions. Intervention in Panama was pursued as a response to “Noriega-inspired” attacks against American military personnel, jeopardizing the security of Americans in the area.⁴⁶ The second use of American military forces abroad was ordered by Bush as a means to stop the Iraqi invasion of Kuwait. Both of these operations were seen as legitimate and successful as responses to attacks on American citizens and American interest. They were both military operations which were backed by U.N. resolutions, but do not fit within Holzgrefe’s definition of humanitarian interventions as presented earlier in this chapter. However, with only two months left of his presidency Bush’s ordered American military forces deployed for humanitarian purposes for the first time in Somalia.⁴⁷

Contrary to the two prior interventions the involvement in Somalia was an attempt to provide humanitarian relief to a country stricken by “man-made” starvation. What was meant to be a swift and easy operation ordered by Bush, securing Somali ports, airfields, and roads in order to safely bring relief to the starving population, before the responsibility was handed

⁴³ Haley, 2

⁴⁴ McCrisken, “Exceptionalism”, 2012

⁴⁵ (...)“that traced its origins to the foreign policies of Theodore Roosevelt”; Record, 97

⁴⁶ Record, 97

⁴⁷ Ibid., 97 - 110

over to the U.N., turned out as a nightmare. The Somali military leader Aideed and his forces resisted American and U.N. presence, and as Clinton entered the office the first American led humanitarian relief operation had resulted in eighteen American soldiers killed, and pictures showing a dead American soldier being dragged through the streets of Mogadishu on national television. As a result, Clinton and his administration grew increasingly reluctant to get involved in conflicts abroad, focused on dealing with the domestic issues, leading by example rather than actively seeking to spread American democratic values. As the “Vietnam syndrome” prevented Bush from ordering an American intervention in the Balkan crisis, the redefined “Vietmalia syndrome” led to a crippling of the willingness to deploy American forces abroad, consequently preventing U.S. military intervention in Rwanda and a reluctance to use force in Yugoslavia.⁴⁸ With the Cold War order dismantled, America was once again turning inward and increasingly relying on a position in the world as a “City upon a Hill”, as the Clinton administration was seeking to deal with the economy at home. As a consequence, Clinton sought to take a retracted position on the world scene, restricting American involvement in U.N. operations through PDD 25.⁴⁹

However, as discussed in previous chapters and as will be further elaborated upon in chapter five, the lack of a stable new world order demanded the U.S. to take action as part of the international community. The Clinton administration found a new rout for American involvement in contrast to the previous administrations which kept their focus on “the powerful and potentially dangerous members of the international community” as a part of Cold War containment policies.⁵⁰ Rather Mandelbaum argues, Clinton and his administration turned their attention towards the “international periphery” conducting “foreign policy as social work.”⁵¹ Clinton and his administration were dealing with what can be referred to as domestic policies in a foreign policy setting. By intervening in countries like Bosnia and Serbia in order to deal with their social, political, and economic problems, Clinton worked to promote American values rather than focusing on traditional foreign policy issues such as fostering relations between neighboring countries. The Cold War containment policies bore the imprint of American exceptionalism as the U.S. governments promoted themselves as “leader of the free world”, taking it upon them to free the world from the tyranny of Communism, creating a democratic international community where the freedom of choice was a prominent feature. The position of the “leader of the free world” as a feature of

⁴⁸ Ibid., 111, 109 - 111

⁴⁹ Melby, 1995, 24-25

⁵⁰ Mandelbaum, 17-18

⁵¹ Ibid.

American exceptionalism and as a part of the foreign policy paradigm became increasingly prominent in the post-Cold War era as the world seemed unable to deal with humanitarian crises without American leadership. Despite the Clinton administration's reluctance to join the U.N. in peacekeeping operations, Dumbrell argues that "Clinton himself was concerned to retain and reinforce the exceptionalist tradition, and indeed tied humanitarian intervention into the narrative of American exceptionalism and special destiny."⁵² As the "leader of the free world" Clinton took on a missionary role and placed humanitarian intervention within the concept of American exceptionalism as he was seeking to promote American values such as democracy, free markets and human rights as he got entangled in the "international periphery."⁵³

4.2 Humanitarian Interventions - War of Necessity or War of Choice?

There are several ways to classify the use of military force abroad and at home; humanitarian interventions versus classical interventions is one way. According to Record another way is by classifying the use of military force in two broad groups, wars of necessity and wars of choice where both classical and humanitarian interventions might be a part. Record's groups are not mutually exclusive because most military interventions by the U.S. are based on a combination of the two groups, however, this classification can help give us an understanding of what kind of reasoning lays behind a decision to involve American forces in distant conflicts.⁵⁴

Wars of necessity can be seen as wars fought as a response to an attack on U.S. territory, U.S. military forces, American interests, and/or attacks on treaty allies, where there is no other option for protection than by using military force. In such instances the U.S. has an obligation and, one can argue, the right to use force in order to maintain or reestablish security and peace. Wars of choice, on the other side, are in essence military interventions ordered as a matter of choice. In such instances there is no legal obligation to intervene, no treaties or binding alliances. Rather there are at least in theory, options other than the use of military force which might be available, and thus keeping American forces away from a potential armed conflict. Record argues that it is exactly the presence of an option, a choice to stay out

⁵² John Dumbrell, *Clinton's Foreign Policy-Between the Bushes, 1999 -2000*, (New York, NY: Routledge, 2009), 80

⁵³ Mandelbaum, 17-18; Dumbrell, 2009, 92; Kane, "Global U.S. Troop Deployment, 1950 – 2003."

⁵⁴ Record, 2

of conflicts, which makes wars of choice much more controversial than wars of necessity.⁵⁵

President of the Council of Foreign Relations, Richard N. Haass, shares much of Record's view when it comes to defining wars of necessity and wars of choice. However, he goes on to argue that even though wars of choice are perceived as controversial, all wars of choice are not necessarily bad. He claims that there are two standards, that if applied could justify using military force as a matter of choice. "First, the likely benefits of using force must look to outweigh the projected costs. Second, this ratio of benefits and costs must be superior to what would be expected from other policies."⁵⁶ While the first standard according to Haass is absolute, the second one is relative. Further Haass claims that if these standards were applied rigorously, the number of wars of choice would decline. Contrary to Record who argues that "none of America's wars since 1945 have been wars of necessity," Haass is of the conviction that both the Korean War and the Gulf War were perceived to be wars of necessity at the time when the decisions to use military force was taken. Thus, even though in hind sight one might have acted otherwise, as Truman argued the decision to go to war or not "should be taken on the "the basis of historical background," and perhaps most importantly the "careful consideration of the facts as they exist at the time."⁵⁷ However, Record claims that "wars of necessity have a way of becoming wars of choice, usually after vital interests have been secured."⁵⁸ Whereas the Korean War developed into a war of choice when Truman decided to reunify North and South Korea by force, the first Iraq war remained a war of necessity as George H. W. Bush learned from Truman's mistakes and kept American troops out of Baghdad and Iraq's internal struggles after the Iraqi army was defeated.⁵⁹

Humanitarian interventions where there is no explicit American interest at stake other than the relieving of human suffering can be and often are perceived as wars of choice, since the U.S. has no legal obligation to be policing the world. But when assessing the definition of humanitarian intervention as presented by Holzgrefe, one can argue that humanitarian interventions might indeed be classified as wars of necessity. The U.S. government signed the treaty of the UN Genocide Convention in 1948, and ratified it, with some reservations in relation to national sovereignty, and made it a part of American law in 1988. Article I of the "Convention on the Prevention and Punishment of the Crime of Genocide" states that "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of

⁵⁵ Record, 2; Richard N. Haass, *War of Necessity, War of Choice, A memoir of Two Iraq Wars*, (New York, NY: Simon & Schuster Paperbacks, 2009)xvii-xviii

⁵⁶ Haass, 2009, xviii

⁵⁷ Record, 2

⁵⁸ Haass, 2009, xxi

⁵⁹ Ibid., xvii - xxv

war, is a crime under international law which they undertake to prevent and to punish.”⁶⁰ Together with the other states that have signed and ratified the treaty, the U.S., then, is according to the convention obliged by international law to take measures to prevent and stop those who commit genocide. In the light of this assessment it is easy to agree with Dumbrell that “if the Convention is to be taken seriously, intervention“ (in Rwanda) “was not a ‘war of choice’ - where exceptionally restrictive standards for troop deployment *should* be applied – but an obligation under international law.”⁶¹ This is to say that in order not to breach international law, the U.S. have had no other choice but to intervene when there has been humanitarian crises such as genocide, spreading foreign countries.⁶²

4.3 Conclusion

Clinton’s engagement in humanitarian interventions will be further assessed through a case study in chapter five. However, in conclusion to the assessment above, one can argue that humanitarian interventions have not been a prominent feature of American foreign policy until the end of the Cold War. Moreover, one finds that American exceptionalism has been present in American foreign policies and as a part of the reasoning to use military force abroad for decades, the humanitarian interventions of the 1990s are no exception. Rather, there is reason to argue that American exceptionalism was as Godfrey Hodgson argues confirmed through the Cold War “victory” over the Soviet Union. An attitude that became further emphasized through American participation in humanitarian interventions, and the U.N.’s seemingly inability to conduct such operations without the U.S. taking an active part.⁶³ Further one can argue from the last discussion above, that by ratifying the Genocide Convention, the U.S. government made it their legal duty to conduct humanitarian interventions in the face of genocide or other grave violations to human rights, along with the other signatory parties. Following this logic, humanitarian interventions should be perceived as wars of necessity.

⁶⁰ “260 (III). Prevention and Punishment of the Crime of Genocide”, *Audiovisual Library of International Law*, United Nations, 2008, <<http://untreaty.un.org/cod/avl/ha/cppcg/cppcg.html>>, (15 November 2011)

⁶¹ Dumbrell, 2009, 80

⁶² Record, 2; U.N., “Chapter IV, Human Rights,” *United Nations Treaty Collection*, November 2011, <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en>, (15 November 2011)

⁶³ Hodgson, 26, 21-27

Clinton's Foreign Policy in Practice

- A case study of Clinton's humanitarian intervention in
Kosovo/former Yugoslavia, 1999.

Entering the White House in 1993, Bill Clinton was forced to deal with a foreign policy field which as John Dumbrell argues was marked by the foreign policy debate on humanitarian interventions. The most pressing issues up for debate were the importance of state sovereignty and whether or not grave violations of human rights, such as massacres and genocide, should trump this principle, thus lead to military interventions. As discussed in earlier chapters, failure in Somalia led to the issuance of the Presidential Decision Directive 25 severely restricting U.S. involvement in conflicts abroad, which one can argue indirectly resulted in the massacre of 800,000 Hutus in Rwanda. Inaction was also an issue as the nationalist president Slobodan Milosevic started his campaign to create a "Greater Serbia", uniting the Serb populated areas of the former Yugoslavia crossing the borders of Bosnia, Montenegro and Croatia, targeting Bosnian Moslems for expulsion and eventually genocide.¹

Keeping Clinton's early humanitarian (non)interventions in mind this chapter will provide a case study of Clinton's alleged humanitarian intervention in Kosovo (former Yugoslavia) in 1999, where Clinton "waged war against Yugoslavia without the slightest shadow of a fig leaf of congressional consent," as proclaimed by historian Walter Russell Mead in his book *Special Providence – American Foreign Policy and How It Changed the World*.² Further this chapter will assess Clinton's use of executive orders to deal with the Kosovo conflict and the sources of power/authority he called upon to do so. Moreover, there will be a discussion of the reactions that followed the intervention in Congress. Many Republicans argued that there had to be clear national interest in order to intervene. Finally the chapter discusses scholarly debates on the issues of separations of power and war powers which surfaced succeeding Clinton's waging of war through executive orders.

¹ John Dumbrell, *Clinton's Foreign Policy – Between the Bushes, 1992 - 2000*, (New York, NY: Routledge, 2009), 62; Samantha Power, *A Problem from Hell – America and the Age of Genocide*, (New York, NY: HarperCollins Publishers, 2002), 247 - 255

² Walter Russell Mead, *Special Providence – American Foreign Policy and How it Changed the World*, (New York, NY: Routledge, 2002), 305

5.1 Humanitarian Interventions – a Case Study

5.1.1 Context – intervening in Bosnia

Entering the Oval Office, Clinton “inherited the post-Vietnam Weinberger and Powell Doctrines,” essentially stating that American military forces “should not be expected to perform non-military, ‘nation-building’ tasks.”³ Held back by anti- involvement attitudes in the Pentagon and the self-imposed restrictions of PDD 25 by the spring of 1994, Clinton was reluctant to get involved in UN led operations, and consequently pursued a policy of minimum involvement in the Balkan conflict. The Clinton administration’s initial attitude towards the Balkan situation was that it was first and foremost a European problem to be handled by the European Community (EC) or the UN, keeping the U.S. outside the conflict both militarily and diplomatically.⁴

Focused on containing the conflict and hoping for a diplomatic settlement, Clinton’s initial response was to stand by former President Bush’s policy of keeping up the 1991 arms embargo implemented, by the UN Security Council over all former Yugoslavian territories. He further supplemented Bush’s arms embargo by issuing Executive Order 12846 *Additional measures with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)*, in late April 1993.⁵ The general sentiment in Washington was, as Bush’s secretary of state James Baker stated so explicitly, that the United States had “no dog in that fight.”⁶ With no national interest in the Balkans, the best course was perceived as staying clear of intervention. However, the seriousness of the situation evolving in the Balkans eventually led Clinton to acknowledge that the U.S. might indeed have “clear interests” in the East European region.⁷ The U.S. had an interest in both preventing the war from spreading through the European continent, making the war come to an end, and preserving NATO’s credibility as a coalition to be reckoned with in the post-Cold War world. In addition, there was as Clinton stated “the humanitarian interest we all share.”⁸ Facing what the administration referred to as “ethnic cleansing”, while avoiding the definition “genocide” with the moral implications connected to its use, Clinton eventually permitted American led airstrikes by NATO against Serb positions

³ Dumbrell, 2009, 66; Power, 261-262

⁴ Dumbrell, 2009, 83

⁵ William J. Clinton, *Additional measures with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)*, Executive Order, 24 April 1993, <<http://www.archives.gov/federal-register/executive-orders/pdf/12846.pdf>>, (14 March 2012)

⁶ Sydney Blumenthal, *The Clinton Wars – An Insider’s Account of the White House Years*, (London: the Penguin Group, 2003), 62

⁷ Dumbrell, 2009, 85

⁸ Ibid., 85

starting in February 1994. Determined not to deploy American forces on the ground, Clinton stuck to airstrikes, which eventually paid off as the aggressive attacks and hostilities between the Serbs and Bosnian Moslems wore off by the fall of 1994. Emphasizing the foreign policy line of the post-Cold War paradigm by Edward Haley, as presented in chapter four, Clinton implemented further economic sanctions through Executive Order 12934 *Blocking property and additional measures with respect to the Bosnian Serb-controlled areas of the Republic of Bosnia and Herzegovina* in October 1994.⁹

However, the spring of 1995 saw the resurgence of the fighting between Serbs and Bosnian Moslems. Despite increased pressure from Congress Clinton kept his resistance towards the arms embargo. NATO air strikes were again launched in order to stop the fighting. Still Clinton's greatest concern was to keep American troops off the ground in Bosnia. As late as 23 May, with Serb attacks on Bosnian Moslems increasing in scope and severity and UN officials taken hostage, the "only clearly agreed position" from a UN principals' meeting "seemed to be that US troops should not be deployed."¹⁰ As Milosevic's forces were closing in on the "safe" areas established by UNPROFOR in Srebrenica Clinton was taking the heat. He expressed concern over the diminishing credibility of US foreign policy and the credibility of the NATO alliance in the post-Cold War world. Facing the possible retreat of European UN forces, Clinton was unwilling to lift the embargo or deploy American ground troops. Consequently, the administration appeared to be "flapping around" with an inconsistent policy on how to handle the escalating crisis.¹¹

As reports of increased aggression and "possible genocides" were reaching Washington urging for immediate action, congressional pressure for action mounted. In June 1995, the House of Representatives "voted 318 to 99 to lift the arms embargo on the Bosnian Moslems", and in late July the Senate followed suit with a vote of 69 to 29.¹² With his foreign policy clearly undermined in Congress, Clinton vetoed the resolution. However, the tragic scenes unfolding in Srebrenica demanded action. Within the span of a couple of weeks in July 1995, Serb forces massacred more than 7000 Bosnian Moslem men and boys. Eventually, in August 1995, the U.S. in collaboration with NATO launched a "three-week bombing campaign" against Serb targets. The massacres were finally put to an end and the war was

⁹ Dumbrell, 2009, 83- 85; William J. Clinton, *Blocking property and additional measures with respect to the Bosnian Serb-controlled areas of the Republic of Bosnia and Herzegovina* National Archives, Executive Order, 25 October 1994, <<http://www.archives.gov/federal-register/executive-orders/pdf/12934.pdf>>, (March 14, 2002)

¹⁰ Dumbrell, 2009, 85

¹¹ Ibid., 86; Power, 391-392, 423

¹² Dumbrell, 2009, 87

concluded with the signing of the Dayton Agreement.¹³ Keeping in mind Clinton's handling of the Balkan crisis during his first three years as president, the following section will provide an assessment of the intervention in Kosovo in 1999.

5.1.2 Kosovo – Waging war through executive orders¹⁴

With the presidency institutionally weakened by the very recent impeachment trial, Clinton's exercise of executive powers was greeted by Congress with distrust and skepticism, as America once again was moving towards military engagement in the Balkans. However, by 1999 President Clinton was no longer a "freshman" in the field of foreign policy and world affairs. The Dayton Agreement led to increased American involvement in the Balkans, which Dumbrell argues helped change American attitudes towards the region. As hostilities were re-surfacing in the Balkans by mid-1998 even Congress with the Majority Leader of the Senate, Trent Lott at the forefront, increasingly pressuring the administration, urging for the U.S. to take a more active part in the defense of Kosovo's population.¹⁵

Kosovo, formerly a province of about 2 million inhabitants in the southern part of Serbia was under Serbian rule during the 1990s as Slobodan Milosevic revoked Kosovo from its autonomy as part of his march towards the creation of a "Greater Serbia".¹⁶ As Kosovo was a province within Serbia consisting mainly of Albanians, there were serious concerns that Kosovo would face the same destiny as Bosnia since Milosevic had been tightening his grip on the region during the first half of the 1990s. Clashes occurred between Milosevic's forces and the "pro-independence insurgent group", the Kosovo Liberation Army (KLA), and civil rights such as "political and personal freedom" were increasingly limited as violence escalated under Milosevic's rule.¹⁷ The first American reaction to the increasingly difficult situation in Kosovo came in December 1992, with the so-called Christmas warning issued by the Bush administration stating "that the United States was prepared to use force on behalf of

¹³ Power, 392-393; Dumbrell, 2009, 85-88

¹⁴ Cliff Kincaid, "How Clinton Waged War Through Executive Order." *America's Survival*, <www.usasurvival.org/kosovowar.html>, (March 12, 2012)

¹⁵ Dumbrell, 2009, 92; Ryan C. Hendrickson, *The Clinton Wars: The Constitution, Congress, and War Powers*, (Nashville: Vanderbilt University Press, 2002), 117

¹⁶ On February 17, 2008, Kosovo declared its independence from Serbia. By the fall of 2011 Kosovo had gained the recognition by over 80 states (United States among others). However, as Russia (as permanent member of the UNSC) is declining to recognize Kosovo as an independent state along with several other UN members, Kosovo is still working to gain recognition by 2/3 of the General assembly members needed along the Security Councils recognition in order to gain the status as a sovereign state.

<http://www.state.gov/r/pa/ei/bgn/100931.htm>; <http://no.wikipedia.org/wiki/Kosovo>; Power, 2002, 452

¹⁷ Richard N. Haass, *Intervention – The Use of American Military Force in the Post-Cold War World*, (Washington, D.C.: Brookings Institution Press, 1999), 165; Dumbrell, 2009, 92

the people of Kosovo” if Milosevic decided to launch further attacks against Kosovo’s inhabitants.¹⁸

With the Bosnian genocides freshly imprinted in memory and dealing with the “guilt over the Rwanda genocides,” Clinton was facing an administration whose attitude towards intervention in the Balkans had changed drastically since 1995 with the new secretary of state Madeleine Albright at the forefront.¹⁹ Contributing to her “crusade” for intervention in Kosovo, Albright’s background provided her with a personal interest in the region. Only eleven years old she had been forced to flee her native country, Czechoslovakia, with her parents as the country underwent a “Soviet-instigated coup d’etat” in 1948.²⁰

By mid-1998 Clinton repeated the 1992 “Christmas warning”. Looking at the deteriorating situation in Kosovo with unease, Clinton moved on to issue Executive Order 13088 on June 9, 1998 *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo*.²¹ Through this E.O. President Clinton declared a national emergency as the ethnic conflict and human suffering in Kosovo “threatened to destabilize countries of the region” and “disrupt progress in Bosnia and Herzegovina in implementing the Dayton peace agreement” negotiated by American diplomats. He further implemented economic sanctions towards the Serb government.²²

With no further success in ending the violence, the consensus was tilting towards the need for the NATO alliance to once again stand up against the aggressors and “toughen its stance, making credible the threat of action.”²³ At the end of September, NATO told Milosevic to stop the military action against Kosovo or face air strikes by NATO forces. In October the same year, the key architect behind the Dayton accords, Richard Holbrooke, was once again sent to negotiate a cease-fire and the withdrawal of Milosevic’s troops from Kosovo. Despite the optimistic outlook of the initial diplomatic efforts, fights resumed and increased in severity by the end of the year. The lack of confidence within NATO in the

¹⁸ Haass, 1999, 165

¹⁹ Power, 447

²⁰ Ibid.; Dumbrell, 2009, 16

²¹ William J. Clinton, *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo* Executive Order, 9 June 1998, <<http://www.gpo.gov/fdsys/pkg/FR-1998-06-12/pdf/98-15888.pdf>>, (19 March 2012)

²² Ibid.

²³ Dumbrell, 2009, 93

Clinton administration's willingness to commit ground troops to halt the mounting atrocities was creating a difficult environment in which to find a solution. However, in the wake of the Serb attack on Racak in January 1999, Clinton publicly announced the American commitment to use military force if Belgrade did not participate in the upcoming peace conference in Rambouillet, along with a blockade of Albania, KLA's closest supporter if KLA decided not to participate.²⁴

Both the KLA and representatives from Milosevic's government attended the conference. However, while the Kosovar Albanians eventually accepted and signed the Rambouillet agreement Milosevic proved harder to convince. The terms of the agreement demanded Serbia to grant Kosovo its autonomy and to accept peacekeeping forces to be stationed in Serbia, among these Clinton would provide 4000 American troops. These were terms Milosevic found hard to agree with (they have in hindsight been criticized as too harsh and thus making an agreement unrealistic). As Holbrook's final attempt to convince Milosevic to sign the agreement in late March failed to succeed, Clinton announced the implementation of the NATO bombing campaign of Serbia on March 24. Without the backing of a UNSC resolution NATO launched its bombing campaign against Serb targets.²⁵

Following the announcement of the NATO campaign, Clinton issued Executive Order 13119, declaring the *Designation of Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the airspace above, and adjacent waters as a combat zone*, on April 13, 1999.²⁶ Two weeks later, Clinton followed up by issuing Executive Order 13120 *Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty* "for the effective conduct of operations in and around the former Yugoslavia related to the conflict in Kosovo."²⁷ However, while the U.S. would commit air forces to the campaign, Clinton assured Congress once again that he did "not intend to put our troops in Kosovo to fight a war."²⁸ Three days later Executive Order 13088 of June 9, 1998 was reinforced by a second order implementing economic sanctions towards the Serbian government. Through Executive Order 13121 Clinton ordered further *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the*

²⁴ Ibid.; Haass; 1999, 165-166

²⁵ Dumbrell, 2009, 93-94

²⁶ William J. Clinton, *Designation of Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Airspace Above, and Adjacent Waters as a Combat Zone*, Executive Order, April 13, 1999, (Washington, D. C., GPO: 1999), <<http://www.gpo.gov/fdsys/pkg/FR-1999-04-16/pdf/99-9738.pdf>>, (April 3, 2012)

²⁷ William J. Clinton, *Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty*, Executive Order, April 27, 1999, <<http://www.gpo.gov/fdsys/pkg/FR-1999-04-29/pdf/99-10901.pdf>>, (March 19, 2012)

²⁸ Dumbrell, 2009, 94

*Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo.*²⁹

Dumbrell argues that as the NATO bombing campaign started it was evident that “any restraint on the Serb action in Kosovo had now effectively been removed.”³⁰ Serbian attacks were intensified and doubts in the effectiveness of NATO’s campaign were surfacing. Within a few weeks hundreds of thousands of Kosovars were made refugees. Some were displaced within their own country, others fled into the neighboring countries of Macedonia and Albania. Due to concerns over the possibility of the refugee flows destabilizing the entire region and the increasingly evident slaughter of thousands of Kosovars, the NATO air campaign was made “more intense and less discriminating”.³¹ By the end of May, Milosevic was indicted by the International War Crimes Tribunal authorized by the United Nations. Nearly 50 000 NATO troops were present at the Kosovan border and Clinton was finally reconsidering the possibility of ground forces being used while war - fighting was still going on. By June 3, Slobodan Milosevic finally gave in to pressure and capitulated. He agreed to stop all repression, to withdraw his forces from Kosovo, and agreed to give back political autonomy to the people of Kosovo. He also permitted an international peacekeeping force (KFOR) to be deployed in the province. The peacekeeping mission was backed by a U.N. Security Council resolution and implemented by NATO. It included European as well as some seven thousand U.S. military troops. With the duration of the mission left open ended, KFOR is still active and present in Kosovo thirteen years after it first was deployed.³²

5.2 Executive Orders and Executive Power - Revisited³³

When assessing President Bill Clinton’s use of executive orders as part of his foreign policy, and as part of American engagement in the humanitarian intervention in Kosovo, it is necessary to establish the sources from where Clinton draws his authority. As elaborated upon in chapter one, the president must when issuing an executive order give reference to the source from where he derives his powers/authority in order for the specific order to be valid.

²⁹ William J. Clinton, *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo*, Executive Order, 30 April 1999, < <http://www.gpo.gov/fdsys/pkg/FR-1999-05-05/pdf/99-11410.pdf> >, (19 March 2012)

³⁰ Dumbrell, 2009, 94

³¹ Haass, 1999, 167

³² Dumbrell, 2009, 96-97; Haass, 1999, 164-167

³³ Mayer, 36

Therefore, when issuing Executive Order 13088, *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo*, Clinton claimed the authority to issue the order by referring to the “authority vested in me [him] as President by the Constitution and the laws of the United States of America.”³⁴ The U.S. Constitution does not specifically grant the president the power/authority to control commerce and other transactions that is the purpose of the E.O. This one can argue helps explain the implied rather than expressly stated constitutional powers.³⁵

However, as president, Clinton had the power to draw on two specific acts which granted him broad powers. Consistent with and by referring to the National Emergencies Act of 1976, Clinton declared a national crisis with regards to the critical situation in Kosovo. By declaring a national emergency, Clinton made available a number of emergency powers authorizing him to “seize property, organize and control the means of production, seize commodities, assign military forces abroad, institute martial law, seize and control all transportation and communication, regulate the operation of private enterprise, restrict travel,” and take measures which might infringe of the life of American citizens.³⁶ Further calling on the International Emergency Economic Powers Act (IEEPA), Clinton referred to his statutory authority as president to “exercise controls over international economic transactions in the future during a declared national emergency”³⁷. This claim to authority permitted Clinton to issue the executive order which would place economic sanctions towards the government of Serbia as a response to the atrocities evolving in Kosovo. Finally his reference to section 301 of title 3, United States, Code “Delegation of Functions”, established Clinton’s power to delegate authority to the Secretary of Treasury and the Secretary of State to provide for efficient execution of the measures ordered.³⁸

By examining the executive orders issued in relations to the Kosovo intervention, one finds that Clinton’s reluctance to expressively state the source of his authority is evident in Executive Order 13119 as well. Through this order Clinton claims the legal basis to “designate the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the airspace

³⁴ Clinton, Executive Order, 9 June 1998

³⁵ Mayer, 36; U.S. Constitution, art. 2, sec. 2,

³⁶ Harold C. Relyea, *CRS Report For Congress: National Emergency Powers*, (Washington, D. C.: Government and Finance Division, 2007), <<http://www.fas.org/sgp/crs/natsec/98-505.pdf>> (March 4, 2012), 1

³⁷ Relyea, 17

³⁸ Clinton, Executive Order, 9 June 1998; U.S. Congress, *United States Code* title 3, sec. 301, (7 January 2011), <http://uscode.house.gov/download/pls/03C4.txt>, (5 April 2012)

above, and adjacent waters as a combat zone” as “pursuant to the authority vested in me [him] as President by the Constitution and laws of the United States of America.”³⁹ The Constitution does not delegate any such powers to the executive. However, by specifically referring to “section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112)” Clinton establishes the authority and purpose behind the E. O.⁴⁰ Section 112 (c) of the internal Revenue Code authorizes the president to declare a combat zone by executive order. While a declaration of Kosovo as a combat zone might seem like a statement of the true nature of the operation, the main purpose of officially declaring Kosovo a combat zone in accordance with the Internal Revenue Code was to make available certain compensation and revenues for the American military personnel actively involved in the intervention.⁴¹

By issuing Executive Order 13120 *Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty* Clinton was able to draw on numerous sources of powers.⁴² As seen in the previous two E.O.s Clinton implies his powers by referring to the “authority vested in me [him] as President by the Constitution and the laws of the United States of America”.⁴³ However, contrary to the two E.O.s assessed above, one can by consulting the U.S. Constitution find that the president is given the power as “Commander in Chief of the army and navy of the United States”, which might imply that he has the authority to order “members of the armed forces to active duty.”⁴⁴ However, as I discussed in chapter three, the authority within the role as Commander in Chief is highly disputed. By referring to section 12304 of title 10 of the United States Code, Clinton creates a solid basis for the E.O. Section 12304 expressly states that as the President of the United States he has the “authority to order a unit or member to active duty to provide assistance in responding to an emergency”, in accordance with the War Powers Resolution of 1973.⁴⁵

Issued on April 30, 1999, Executive Order 13121 *Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in*

³⁹ Clinton, Executive Order, 13 April 1999

⁴⁰ Ibid.

⁴¹ U.S. Congress, *Title 26 - Internal Revenue Code, section 112*, (Washington, D. C.: GPO, 1986), 466, <<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleA-chap1-subchapB-partIII-sec112.pdf>>, (4 April 2012)

⁴² Clinton, Executive Order, 27 April 1999

⁴³ Ibid.

⁴⁴ Ibid.; U.S. Constitution, art. 2, sec. 2

⁴⁵ U.S. Congress, *Title 10 - Selected Reserve and Certain Individual Ready Reserve Members; Order to Active Duty Other than During War or National Emergency*, sec. 121 and 12304, the United States Code, (12 January 2012), <<http://www.law.cornell.edu/uscode/text/10/12304>>, (4 April 2012)

Kosovo, was issued to provide “additional steps” and amendments to Executive Order 13088 of June 9, 1998.⁴⁶ Further implementing economic sanctions towards the Serb government, Clinton draws on the exact same sources of authority as discussed in relations to Executive Order 13088. These are the statutory authority granted through the International Emergency Economic Powers Act, the National Emergencies Act and section 301 of title 3, United States Code along with the powers granted to the president in the U.S. Constitution and laws.⁴⁷

5.3 Response

Republicans have generally been skeptical of humanitarian missions that do not pose as direct threats to American national security. As political scientist Warren I. Cohen argues, “the traditional conservatives tended to favor (...) the use of American power only when vital interests were threatened.”⁴⁸ Neoconservatives on the other hand “were generally more ideological, almost Wilsonian in their crusading zeal.”⁴⁹ Such diverging attitudes towards the Kosovo intervention, one can argue was evident in Washington as the American involvement in the Balkans increased.

Republicans on Capitol Hill were divided towards the American engagement in Kosovo. Whereas the traditionally conservative “isolationist/alooof” wing of the party was criticizing Clinton’s conduct of the war in the Balkans urging for less involvement in the region, the neoconservative interventionist wing of the party proved even stronger. Along with moderate and interventionist Republicans such as Senators John McCain (R-Ariz.), John Warner (R-Va.), and Chuck Hagel (R-Nebr.) joining voices with prominent Democrats such as Senators John Kerry (D-Mass.) and Joe Biden (D-Del.), the isolationist outcries were drowned. Some neo-Conservatives were labeling the intervention as “tough Wilsoniansim in action”, while others such as presidential candidate George W. Bush “endorsed the bombing campaign, demanded Serbian ‘unconditional surrender’ and wondered simply if the bombing were being undertaken with ‘enough ferocity.’”⁵⁰

Recognizing the diverging attitudes toward the Kosovo intervention within the

⁴⁶ Clinton, Executive Order, 30 April 1999

⁴⁷ Ibid.

⁴⁸ Warren I. Cohen, *America’s Failing Empire – U.S. Foreign Relations since the Cold War*, (Victoria, Australia: Blackwell Publishing, 2005), 40

⁴⁹ Ibid.

⁵⁰ Dumbrell, 2009, 96; Karen Hosler, “Congress wary on Kosovo ground troops”, *Baltimore Sun*, 25 April 2012, <http://articles.baltimoresun.com/1999-04-25/news/9904250146_1_kosovo-ground-troops-ground-forces>, (21 April 2012); Hendrickson, 128

Republican (Congressional majority) camp, the section below will explore the reactions which surfaced as President Clinton chose to join America's NATO allies in conducting a humanitarian intervention in Kosovo, waging war through executive orders.

5.3.1 National interest

The Kosovo intervention has placed itself in history as one of the many humanitarian interventions which took place in the 1990s. As stated in chapter three, there is especially one prominent feature one can find when studying humanitarian interventions, that is the presumed "non-existence" of national interests in conducting a humanitarian intervention on behalf of the intervening parties.⁵¹ Whereas classical interventions usually are based on a perceived national interest (political motifs, resource availability, responding aggression/attacks etc) it is not necessary to have any national interest in order to conduct humanitarian interventions other than a willingness to prevent or stop human suffering and human rights violations.⁵²

Recognizing the prevalence of Wilsonianism and American exceptionalism in American foreign policy there is reason to assume that the need for hard core national interests such as countering aggression directed at the U.S. or U.S. interests abroad would not be necessary in order to engage in humanitarian interventions. Rather one would assume that the protection of American values, democracy and human rights, along with a moral obligation to act against violations of these values would be reason enough. However, it is evident that the Realist component in the field of American foreign policy was very much present during the 1990s. Politicians on Capitol Hill repeatedly argued against humanitarian interventions on the ground that the U.S. had no national interest in countries such as Somalia, Bosnia and Kosovo. The U.S. had "no dog" in these fights.⁵³

In the light of George H. W. Bush's statement of American foreign policy combining "rock-solid realism" with "clear-eyed idealism," the Realist emphasis on clear national interests in order to conduct any operations abroad is evident in the discussions surrounding America's involvement in Kosovo.⁵⁴ Critics of Clinton's involvement in Kosovo, which could be found among the public as well as senior officials in Pentagon, including General Colin

⁵¹ "Crimes of War – Educator's Guide: Humanitarian Intervention", *Human Rights Education Associates (HREA)*, 1997-2007, <http://www.hrea.org/index.php?base_id=132>, (10 November 2011)

⁵² Ibid.

⁵³ Blumenthal, 2003, 62

⁵⁴ Svein Melby, *Amerikansk Utenrikspolitikk*, (Norsk Utenrikspolitisk Institutt (NUPI), TANO: 1995), Online via Nasjonalbiblioteket, NBdigital <http://urn.nb.no/URN:NBN:no-nb_digibok_2008061604012>, (12 February 2012), 15

Powell, argued that no “compelling argument” had been presented in order to state that American involvement in the humanitarian effort in Kosovo was in “America’s ‘national interest.’”⁵⁵ However, despite this criticism and the fact that it should be unnecessary in the case of engaging in humanitarian interventions, Clinton did make an effort to establish the involvement in Kosovo as a national interest of the United States. In his address to the nation on the eve of the NATO bombing campaign, Clinton argued that “ending this tragedy,” of the war in Kosovo, “is a moral imperative.”⁵⁶ Clinton further asked: “Do our interests in Kosovo justify the dangers to our armed forces?” “I have thought long and hard about that question. I am convinced that the dangers of acting are far outweighed by the dangers of not acting – dangers to defenseless people and to our national interests.”⁵⁷

Drawing on the Wilsonian belief in human rights and the national interest of keeping American costs down, he continued: “we have an interest in avoiding an even crueler and costlier war.”⁵⁸ Cost prevention can be seen as an American national interest not only in relation to the resources required conducting an intervention in Kosovo. Moreover, the successful conduct of the NATO operation in Kosovo was important for the credibility of the alliance in the post-Cold War world. For the U.S., NATO’s credibility mattered as an alliance working for the collective security of its members and as an organ which would share the costs of keeping the world and American interests safe in the future. Thus one can argue, Clinton merged the values of American Idealism with the principles of Realism.⁵⁹

Seen from a somewhat different perspective, Clinton’s emphasis on the “moral imperative” when advocating for the humanitarian intervention is one of the first signs of the emergence of a “new, broader definition of national interest”, found in the common interest of peace built on human rights and democratic values.⁶⁰ Then U. N. General Secretary, Kofi A. Annan argued in an article in *The Economist* shortly after the Kosovo intervention that as the world humanity faced in the post-Cold War era had changed, a change of the “concept of national interests” was needed. He argued that the “new century [...] would induce states to

⁵⁵ Dumbrell, 2009, 95

⁵⁶ William J. Clinton, *Public Papers of the President: William J. Clinton, 1999*, (Washington, D.C.: GOP, 1999), <<http://www.gpo.gov/fdsys/pkg/PPP-1999-book1/pdf/PPP-1999-book1-doc-pg451.pdf>>, (30 March 2012), 451, 452

⁵⁷ Ibid.; Ivo H. Daalder and Michael O’Hanlon, “Bush and Powell need to remember the Lessons of Kosovo”, *The New York Times*, 1 November 2001, <http://www.nytimes.com/2001/11/01/opinion/01iht-edivo_ed3_.html>, (21 April 2012)

⁵⁸ Clinton, *Public Papers*, 1999, 451 - 452; Power, 449

⁵⁹ Power, 448-451; Dumbrell, 2009, 98

⁶⁰ Kofi A. Annan, “Two Concepts of Sovereignty”, *The Economist*, 18 September 1999, online via Press Articles by the Secretary General, <<http://www.un.org/News/ossg/sg/stories/articleFull.asp?TID=33&Type=Article>>, (21 March 2012)

find greater unity in the pursuit of common goals and values. In the context of many of the challenges facing humanity today, the collective interest is the national interest.”⁶¹

At the time of writing, Kofi A. Annan the “special representative for the U.N. and Arab League”, is engaged as the key diplomat to negotiate the termination of human rights violations conducted by the Syrian president, Bashar al-Assad.⁶² The emerging reliance on the collective interest of human rights emphasized by Annan in 1997, have evolved into the twenty first century as the international community has been forced to deal with the painful transition from totalitarianism to democracy especially in the Middle East region. As revolts were spreading in Libya and the Libyan leader, Muammar al-Quaddafi reacted by launching a civil war, killing his own people, the U.N. reacted by issuing UNSC resolution 1973 (2011) condemning Libya’s “gross and systematic violations of human rights”.⁶³ Fearing a potential massacre in Libya, President Barack Obama announced on March 28, 2011, that “it was not in our [America’s] national interest to let that happen”.⁶⁴ Albeit human rights have come to represent an important collective interest of the international community, countries such as Russia and China are still vetoing U.N.S.C. resolutions aimed at condemning and put an end to human rights violations, on the grounds that such resolutions might violate Syria’s sovereignty. Further, one finds that American leaders are still reluctant to deploy military ground troops as part of humanitarian interventions.⁶⁵

5.3.2 Separation of Powers

As discussed briefly in chapter one, the issue of separation of powers is an important aspect of the discussion on to the use of executive orders to implement policies, especially in relation to foreign policies such as the deployment of American military forces abroad. Kenneth R. Mayer argues that “although the rate at which Clinton issued executive orders dropped after the Republicans won congressional majority in 1994, critics still accused him of using the

⁶¹ Ibid.

⁶² Stephen Erlanger and Rick Gladstone, “Pressure Builds for Tougher Line as Syria Is Said to Shun Peace Plan”, *The New York Times*, 19 April 2012, < <http://www.nytimes.com/2012/04/20/world/middleeast/syria-united-nations-secretary-general-ban-ki-moon-cease-fire.html>>, (21 April 2012)

⁶³ U.N. Security Council, *Resolution 1973 (2011)*, (17 March 2011), <<http://www.unhcr.org/refworld/country,,UNSC,,LBY,,4d885fc42,0.html>>, (21 April 2012)

⁶⁴ Barack Obama, *Remarks by the President in Address to the Nation on Libya*, 28 March 2011, (Washington, D.C.: White House, 2011), < <http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>>, (21 April 2012)

⁶⁵ Neil MacFarquhar and Anthony Shadid, “Russia and China Block U.N Action on Crisis in Syria”, *The New York Times.com*, 4 February 2012, < http://www.nytimes.com/2012/02/05/world/middleeast/syria-homs-death-toll-said-to-rise.html?_r=1&pagewanted=all#>, (21 April 2012); Lisa Anderson, “Demystifying the Arab Spring”, *Foreign Affairs*, vol. 90, no. 3, (2011), 6-7

prerogative power to turn the presidency into a dictatorship.”⁶⁶ Some even accused Clinton of using executive orders “to ‘act dictatorially without benefit of constitutional color.’”⁶⁷ As this section will show, criticism was raised towards Clinton’s use of war powers in order to deploy American military forces as part of NATO’s humanitarian intervention in Kosovo.

U.S. involvement in Bosnia during Clinton’s first term in office led Congress to consider measures that would restrict the president’s ability to act independently in matters relating to American military involvement in the conflict. When Clinton in his second term once again got involved in the Balkans, new measures to restrict his powers were suggested. As the situation in Kosovo worsened during the winter of 1998/99 with intensified Serb attacks and NATO’s bombing campaign not giving the expected results, talks flourished on the “Hill” of Clinton potentially ordering the deployment of ground troops to fight in Kosovo. Whereas Clinton’s earlier statements had emphasized that American ground troops would not be deployed, his stance by the spring of 1999 was almost the contrary. Answering to increasing criticism and skepticism about the effectiveness of the NATO campaign Clinton assured Congress of his persistent belief in the continued use of NATO air power alone, ““however,”” he added, ““were I to change my policy with regard to the introduction of ground forces, I can assure you that I would fully consult with the Congress.””⁶⁸ Keeping in mind that American participation in the humanitarian intervention in Kosovo was implemented through Clinton’s issuance of executive orders only, without the consultation or consent of Congress, it is reasonable to assume that Congress listened to Clinton’s statement with a great deal of skepticism towards his credibility.⁶⁹

Following the statement by Clinton of his intentions, the House of Representatives voted 249-180 in favor of making “legislative approval for ground troop commitment mandatory” on April 28.⁷⁰ However, the Act was never considered by the Senate, and thus failed to become law. As one of several attempts to curb Clinton’s executive (war) powers, the legislation would have restricted the president’s powers as Commander in Chief, undermining the option of circumscribing Congress by ordering deployment of ground troops through executive order. As such, this would give the system of separation of powers and checks and balances a chance to work before American ground troops were introduced in a

⁶⁶ Mayer, 9

⁶⁷ Ibid.

⁶⁸ Dumbrell, 2009, 96

⁶⁹ Ibid.

⁷⁰ Ibid.

hostile environment, as intended by the “Founding Fathers”.⁷¹

Adding to this House vote, three more votes were held in the House of Representatives in relation to American involvement in Kosovo. An important issue up for voting was “a joint resolution declaring war upon the Federal Republic of Yugoslavia.”⁷² The resolution was “rejected, by a vote of 427 to two”, before the House again voted and rejected “by a tie 213 to 213” a resolution put forth by the Senate on March 26, “authorizing the use of force” in Kosovo.⁷³ The last issue on the agenda was a concurrent resolution, that if passed would have required Clinton to order the withdrawal of all American troops from the NATO intervention in Yugoslavia. However, as the three preceding resolutions, the resolution was rejected by the House, this time on “a 290 to 139 vote”⁷⁴. Whereas the majority of Republicans voted in favor of authorizing Clinton’s use of force in Kosovo, Democrats were mainly voting against any such authorization. However, the House vote ordering the withdrawal of troops from Kosovo resulted in a majority of Republicans in favor and a majority of Democrats against the resolution. The contradicting voting pattern as seen in the House voting confirms the argument by Cohen of the diverging attitudes towards humanitarian interventions within the parties.⁷⁵

Prior to the Clinton presidency, attitudes toward the exercise of war powers had tended to follow party lines. Democrats, on one side, had advocated for legislative authorization before American engagement in hostile environments, while Republicans, on the other side, had defended the executive’s war powers. This changed, however, with a Democrat taking office after twenty years of Republican presidents holding the executive, only divided by a short break with the Democrat Jimmy Carter’s four years in office. Professor of Law, John C. Yoo argues that “the only governmental critics of the modern system of war powers (...) are Republican congressmen who began service after the 1994 elections.”⁷⁶ These are the congressmen who “are not bound by earlier statements on war powers under Republican

⁷¹ John C. Yoo, “Kosovo, War Powers, and the Multilateral Future”, *University of Pennsylvania La Review*, Vol. 148, No. 5, (May 2002), online via JSTORE <http://www.jstore.org/stable/3312752>, (April 2, 2012), 1681; Larry E. Craig, “Clinton Kosovo Intervention Appears Imminent – Bombing, or Ground Troops, or Both”, *United States Senate Republican Policy Committee*, (February 22, 1999), <http://rpc.senate.gov/releases/1999/fr022299.htm>, (March 12, 2012); U.S. House of Representatives, *H.R. 1596*, 106th Congress, 1st Session, 1999, (Washington, D. C.: GPO), online via the Library of Congress Thomas, < <http://www.gpo.gov/fdsys/pkg/BILLS-106hr1569eh/pdf/BILLS-106hr1569eh.pdf>>, (April 2, 2012); Louis Fisher, *Presidential War Power*, 2nd ed. revised, (Kansas: the University of Kansas Press, 2004), 183

⁷² Yoo, 2000, 1681

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ “U.S. Congress Votes Database: 106th Congress”, *Washington Post*, <<http://projects.washingtonpost.com/congress/106/>>, (21 April 2012); Cohen, 2005, 39-41

⁷⁶ Yoo, 2000, 1684

presidents.”⁷⁷

As Congress failed to halt Clinton’s exercise of war powers a group of thirty-one congressmen led by Republican Tom Campbell, brought before the court an action claiming that Clinton had “violated the War Powers Resolution and the War Powers Clause of the Constitution” by engaging American military forces in the NATO led Kosovo operation.⁷⁸ The case known as *Campbell v. Clinton* was dismissed by the courts on the basis of the appellants’ lack of standing, emphasizing the “importance of Congress acting as an institution – through a majority of its members – rather than having a few legislators bring a dispute to the judiciary.”⁷⁹ However, had Clinton ordered the use of military forces in Kosovo against congressional vote, the appellants would have had standing, and a case to be reviewed by the judiciary.⁸⁰

5.3.3 The Debate on War powers and the War Powers Resolution

Presidential war powers have been subject to numerous debates as American presidents have sought to maximize executive power and at times gone beyond constitutional limitations. The presidency of Richard Nixon is a prime example of this as he used his powers to secretly conduct war, expanding military activity into the neutral territory of Cambodia without informing Congress. Thirty years later President George W. Bush and his Vice President Dick Cheney led a strong executive as they claimed the executive power as Commander in Chief to conduct the War on Terror at home and abroad, with a Republican Congress accepting the broad claims of power. Nearly thirty years apart, the presidencies of Nixon and Bush led scholars such as historian Arthur M. Schlesinger, jr. and political scientist Andrew Rudalevige to question the legitimacy of executive war powers and argue that the executive had evolved into an “imperial presidency”.⁸¹

As a response to the case of *Campbell v. Clinton*, a debate on the constitutionality of Clinton’s conduct of war in Kosovo was raised. Louis Fisher, a pro-Congress scholar, argues

⁷⁷ Ibid.,

⁷⁸ Laurence H. Silberman, *Tom Campbell, Member, U.S. House of Representatives, et al., Appellants v. William Jefferson Clinton, President of the United States, Appellee*, (Washington, D. C.: United States Court of Appeals for the District of Columbia Circuit, 1999), online via Library of Congress, (March 21, 1999), <<http://sciences.aum.edu/jps/war/Campbell2.html>>, (April 1, 2012)

⁷⁹ Louis Fisher, “The Law: Litigating the War Power with ‘Campbell v. Clinton’”, *Presidential Quarterly*, vol. 30, no. 3, (2000): 564-574. Online via JSTORE, <<http://www.jstore.org/stable/27552122>>, (1 April 2012), 572

⁸⁰ Silberman. 1999; Hendrickson, 130 - 133

⁸¹ Arthur M. Schlesinger, jr., *The Imperial Presidency*, (New York, NY: Houghton Mifflin Company, 1973); Andrew Rudalevige, *The New Imperial Presidency*, (Ann Arbor, MI: The University of Michigan Press, 2005); Fisher, 2004, 138 – 140, 211 - 218, 272 - 274

in the article *The Law: Litigating the War Power with 'Campbell v. Clinton'* that the presidential war powers have been expanded through “executive initiatives” such as executive orders, “congressional acquiescence” by failing to check the executive’s use of war powers and through “judicial passivity”, as judges repeatedly “avoid deciding in war power cases”.⁸²

Fisher, along with legal scholars such as John Hart Ely and David Gray Adler argues that the war powers are primarily granted to and therefore rests with the Congress through the constitutionally granted powers to “declare War, grant Letters of Marque and Reprisal” and “raise and support Armies,” as a means to prevent presidential war-making.⁸³ They further argue that although given the power as Commander in Chief in the Constitution, the President cannot act on these powers unless authorized through congressional legislation. By the constitutional interpretations given by pro-Congress scholars such as Fisher, Clinton’s use of war powers in relations to the Kosovo intervention was unconstitutional as he failed to ask for or gain an authorization from Congress to involve American military forces in the operation. As a result, Fisher argues, Clinton went beyond the powers granted to the presidency through the Constitution.⁸⁴

Perhaps more controversial than Fisher and his pro-Congress colleagues, some scholars, including John C. Yoo, questions this rigid reading of the constitution and the reliance on perceived intent of the Framers in relations to the war powers. Yoo advocates a broader interpretation of the constitutional text, creating a flexible system of war powers which “encourage presidential initiative in war,”⁸⁵ a system where “the (legislative and executive) branches pursue their plenary constitutional powers.”⁸⁶ He argues that if both the executive and legislative branches “agree on foreign policy goals, the Constitution allows for effective and swift cooperation” through the use of their respective war powers.⁸⁷ However, if conflict arises, the branches can use their powers to check each other “until a political consensus is reached.”⁸⁸

Yoo criticizes Fisher for putting too much meaning into the constitutional text granting Congress the power to declare war. When doing so, he argues, Fisher grants Congress the

⁸² Fisher, “The Law: Litigating the War Power”, 2000, 564; Yoo, 2000, 1687

⁸³ U.S. Constitution, *Article 1, sec. 8*

⁸⁴ Fisher, 2004, 12, 14-15, 198; Louis Fisher, “Unchecked Presidential Wars”, *University of Pennsylvania Law Review*, vol. 148, no.5, (2000): 1637-1672. Online via JSTORE, <<http://www.jstor.org/stable/3312751>>, (1 April 2012), 1658

⁸⁵ John C. Yoo, “The Continuation of Politics by Other Means: the Original Understanding of War Powers” *California Law Review*, Vol. 84, No. 2 (Mar., 1996), pp. 167-305, online via Jstore, <<http://www.jstor.org/stable/3480925>>, (April 6, 2012)

⁸⁶ Yoo, 2000, 1703

⁸⁷ Ibid.

⁸⁸ Ibid.

“power to initiate all forms of hostilities,” and thus marginalize the President’s power as Commander in Chief.⁸⁹ By Fisher’s interpretation, Clinton’s use of war powers would be unconstitutional. However, Yoo further argues that by initiating engagement in military hostilities, Clinton placed the power within Congress who through appropriations could determine to support or end American involvement. By the constitutional interpretation as presented by Yoo, Clinton’s military involvement in Kosovo without a congressional authorization or declaration of war “fell within the formal boundaries established by the Constitution” as Congress failed to use the powers available at hand in order to stop the military involvement.⁹⁰

The debate on war powers as an aspect of separation of powers, gains a second layer when one takes into consideration the War Powers Resolution (WPR), which came into law on November 7, 1973 in the wake of the Vietnam War and Nixon’s abuse of executive war powers. The claim put forth by Campbell et al. did not only state that Clinton went beyond the Constitutional limits on war powers, but also that he violated the War Powers Resolution. The purpose of the resolution is “to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities,” thus restricting a president’s ability to wage war by his own authority.⁹¹ The WPR further states that in order for the president to introduce American military forces into actual or imminent hostilities there has to exist either “a declaration of war, specific statutory authorization, or a national emergency created by attack upon the United States, its territories, its possessions, or its armed forces.”⁹² It further requires the president to “consult with Congress before introducing United States Armed Forces into hostilities,” and report to Congress within forty-eight hours of the force deployment.⁹³ If Congress does not respond to such a report by issuing a declaration of war or authorized the use of American forces, the President is required to withdraw all forces “within sixty calendar days after a report is submitted or is required to be submitted”⁹⁴. However, Adam L. Warber argues that despite the efforts to restrict presidential use of war powers, “many chief executives have argued that the War Powers Resolution is unconstitutional”, thus executive orders might serve as a means for presidents to use the war

⁸⁹ Ibid., 1688

⁹⁰ Ibid., 1730

⁹¹ “50 USC CHAPTER 33 - WAR POWERS RESOLUTION, sec. 1541-1548”, *Legal Information Institute*, (Itacha, NY, Cornell University Law School) < <http://www.law.cornell.edu/uscode/text/50/chapter-33>>, (2 April 2012)

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid. ; Yoo, 2000, 1677

making powers they argue lay within the executive branch.⁹⁵

Responding to the requirements as drawn up in the War Powers Resolution, Clinton informed Congress of American engagement in the NATO bombing campaign on March 26, within the 48 hour requirement of the resolution, and in Clinton's own words, "consistent with the War Powers Resolution."⁹⁶ This would enable Congress to declare war, authorize, or disapprove of the engagement, and require the withdrawal of American forces. Clinton never asked explicitly for Congress to authorize his use of military force, rather he told Congress in his letter that he would "appreciate the support of Congress in this action."⁹⁷ However, as stated above, Congress collectively failed to take any measures in relation to the intervention in Kosovo, other than stating support for the troops.⁹⁸

In any such event, the War Powers Resolution requires the President to "terminate any use of United States Armed Forces" within sixty days if he fails to gain authorization from Congress to keep up the engagement.⁹⁹ As Clinton kept American forces actively involved in the NATO operation until June 10, the use of American forces went on for seventy-nine days, nineteen days over the time limit stated in the WPR. Consequently, one can argue that although Clinton did follow the initial procedures of reporting to Congress as outlined in the War Powers Resolution, he failed to comply with the sixty day limit, and thus went beyond the powers granted to him through the War Powers Resolution as argued by Campbell et al.¹⁰⁰

5.4 Conclusion

Critique was raised towards Clinton involving American military forces in Kosovo, culminating in the court case of *Campbell v. Clinton*. However, Congressional opposition towards the intervention was divided within the parties. Whereas Republican Tom Campbell opposed the intervention, other prominent Republicans including Senators John McCain John McCain, John Warner, and Chuck Hagel along with Democrats such as Senator John Kerry and Joe Biden, favored the intervention arguing for the need to provide the President with the authority to use all force necessary in order put the Serb aggression to halt. Pentagon with officials such as General Colin Powell, to a large degree opposed the intervention as they

⁹⁵ Adam L. Warber, *Executive orders and the modern presidency: Legislation from the oval office*, (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2006), 76, 77; Silberman

⁹⁶ Clinton, *Public Papers*, 1999, 460

⁹⁷ Ibid.

⁹⁸ Yoo, 2000, 1680; U.S. Congress, *H.R. Res. 130*, 106th Cong. (1999), online via the Library of Congress, Thomas, <<http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HE00130:@@L&summ2=m&>>, (4 March 2012)

⁹⁹ 50 USC CHAPTER 33 - WAR POWERS RESOLUTION, sec. 1544

¹⁰⁰ Silberman, 1999

argued that Clinton lacked clear national interest for engaging American forces in the NATO operation, while scholar such as Fisher argued that he was violating the constitutional principle of separation of powers.

What becomes evident above is that Clinton was able to wage war in Kosovo through executive orders due to the inability or unwillingness of Congress to apply their legislative powers and the power to withhold appropriate funds as granted in the U.S. Constitution. Albeit the National Emergencies Act grants broad emergency powers to the executive, it simultaneously grants Congress the authority to check these powers by “modify(ing), rescind, or render dormant” the executive powers, adding to the constitutional checking powers.¹⁰¹ Thus, Congress had the ability to stop the President’s conduct of war by “refusing to appropriate the funds” needed to sustained military operations and/or by requiring troop withdrawal through a joint resolution and by drawing on the National Emergencies Act.¹⁰²

What the debate on Clinton’s use of war powers and his violation of the principle of separation of powers comes down to, then, is the interpretation of the war powers granted in the Constitution. Through the issuance of executive orders Clinton implemented foreign policies to react to the human rights violations in Kosovo. In doing so, he stated his sources of authority as those being granted to him through the Constitution and U.S. laws. His constitutional powers as president are as the discussion of the war powers debate shows, disputed. However, by referring to the laws of the United States which essentially are created by Congress, such as the National Emergencies Powers Act, the International Emergency Economic Powers Act, and the U.S Code, Clinton established his authority to issue the executive orders implementing policies with regards to American engagement in Kosovo as valid. With the exception of the prolonged deployment of American forces in Kosovo, by following the procedures for executive deployment of military forces as stipulated by Congress through the WPR, Clinton gave Congress the opportunity to either authorize and declare war, or demand the withdrawal of American forces from Kosovo. As the April 28 House vote shows, Congress failed to check Clinton’s use of war powers. One can argue then that the question of the constitutionality of Clinton’s engagement in Kosovo relies to a large degree on the constitutionality of the tools and procedures used in the conduct of war, such as executive orders, U.S. law and more specifically the War Powers Resolution. In order to answer such questions one needs to engage in extensive Constitutional law analysis, which is beyond the scope and intention of this thesis.

¹⁰¹ Relyea, 1; Mayer, 6-7

¹⁰² Yoo, 2000, 1681; U.S. Constitution, art. 1, sec. 1 & 8,

CONCLUSION

Throughout the twentieth and continuing into the twenty first century, Presidents have been able to claim broad powers through the issuance of executive orders as they have implemented policies of legislative nature, and thus in practice used powers which are originally granted to the Congress in the Constitution. The presidency of Franklin D. Roosevelt is a prime example of presidential lawmaking as he issued more executive orders than any other president before or after. Moreover, the nature of the orders issued raised voices within and outside the administration of questioning the constitutionality of the executive orders. One such controversial order was Executive Order 9066, *Authorizing the Secretary of War To Prescribe Military Areas*, and thus permitting the internment of Japanese Americans. As the number of executive orders declined in the post- Second World War era, Harry S. Truman's use of executive orders caught attention of both the legislative and the judicial branches, specifically the issuance of Executive Order 10304 *Directing the Secretary of Commerce To Take Possession of and Operate the Plants and Facilities of Certain Steel Companies*. This particular executive order eventually led to the *The Steel Seizure Case* and the *Youngstown concurrence* in 1952, where the Supreme Court struck down on Truman's wide claim to powers, and further established guidelines for checking the legitimacy of the authority claimed. However, despite the Youngstown Concurrence and the decline in executive orders issued, the use of executive orders has proven to be a controversial exercise of executive power throughout the twentieth century.

The post- Cold War world was marked by instability and conflict, economic globalization and the opening up of new markets around the world, creating an interesting and challenging international environment in which to operate. As the first president elected after the Cold War's end, President Bill Clinton faced the important task of re-inventing America's central role on the international scene as he entered the Oval Office. . How and why did President William J. Clinton use executive orders for foreign-policy purposes significantly more frequently than most of his predecessors in the 20th century? Several aspects become evident when assessing President Bill Clinton's foreign policy in relation to his use of executive orders.

Generally skeptical about getting too heavily involved in foreign affairs, Clinton became involved in the post-Cold War World through the foreign policy strategy of democratic enlargement. The pressing international situation forced Clinton to create a

comprehensive foreign-policy strategy outlining the most important goals and motives of the administration's foreign policy. However, his reliance on the economy as an integrated part of both the domestic and foreign policy is very much evident in his enlargement strategy and further in his use of executive orders.

Clinton held a moderate/conservative attitude through his reliance on free trade, in contrast to the majority of Democrats in Congress who held a far more skeptical and protectionist attitude towards free trade and NAFTA. Moreover, Clinton's reliance on free trade as an essential part of the globalization and its contribution to the process of spreading democracy around the world, finds its Republican parallel in the presiding president Ronald Reagan's advocacy of American free trade as part of the globalization effort.¹

Clinton's democracy promotion through the expansion of free trade did not only enhance the American position in a globalizing economy, further the effect of the democratic enlargement strategy was an attempt to strengthen the economic well-being of a number of underdeveloped countries in Latin American, Africa, and in Asia. Enhancing the economic situation in third-world countries would serve the American national interest both in relation to the national security and potentially the American economy. In Clinton's own words: "people who raise each others' living standards through commerce are less likely to become combatants."² Moreover, by strengthening the economies in other countries, Clinton did not only seek to create a stable new world order, the effect of establishing stable new economies around the world was the opening up of new markets for trade. The globalization effort has the past 20 years led these countries to experience great economic and social progress; however, this growth has happened at the same time as western nations have experienced deindustrialization and periods of economic stagnation partly due to outsourcing of jobs to nations with lower labor costs.

Clinton's use of executive orders reflects his determination to make economic policies a vital part of the foreign policy. Executive orders concerning export, foreign trade and foreign economic policies in general constituted nearly 50 percent of his executive orders that were issued for foreign policy purposes, and more than 15 percent of the total amount of executive orders issued by Clinton. Constituting a substantial part of this group one finds executive orders implementing foreign economic sanctions, issued as a part of the effort of dealing with the instable domestic situations in Haiti, the Balkans and rouge states such as

¹ Eric M. Uslaner, *The Democratic Party and Free Trade: An Old Romance Restored*, (College Park, Maryland: 2000), <<http://www.bsos.umd.edu/gvpt/uslaner/smu.pdf>>, (25 April 2012), 1-2

² John Dumbrell, *Clinton's Foreign Policy-Between the Bushes, 1999 -2000*, (New York, NY: Routledge, 2009),168

Iran.

The focus on economic policies as part of the administration's foreign-policy enlargement strategy and the use of executive orders to implement economic sanctions on foreign governments make evident the relevance of what P. Edward Haley refers to as the post-Cold War paradigm, which argues that democracy promotion and economic sanctions along with globalization and a reliance on American exceptionalism were essential as part of the post-Cold War American foreign policy.

During the course of his presidency, Clinton came to embrace the importance of human rights and humanitarian intervention. This attitude follows the line of Wilsonianism as part of the American foreign policy discourse, with Clinton emphasizing the responsibility of "creating a peaceful international community that accepts the rule of law."³ However, even though spreading democracy was an important aspect of the enlargement strategy, Clinton's emphasis on the need for geopolitical interest places him within the neo-Jeffersonian foreign policy tradition. This is evident due to Clinton's refusal to deploy troops in Rwanda to end the genocide. However, in his memoirs Clinton reveals that refusing to do so was the thing he regrets the most. Clinton was possibly torn between Wilsonian idealism and neo-Jeffersonianism. Moreover, albeit Clinton has been portrayed as a proponent of multilateralism by historians and political scientists alike, the assessment of his reluctance to join the U.N. in peacekeeping operations and the issuance of PDD 25 portrays him in the words of Hilde E. Restad, as a unilateral internationalist. The controversial events of the succeeding presidency where George W. Bush, without U.N. approval went to war on Iraq, makes Clinton's foreign policy to be a moderate unilateral internationalist foreign policy in comparison. However, one can argue that Clinton's unilateral internationalist inclination have contributed to pave the way for an even more extreme unilateral internationalism by the Bush administration.⁴

Despite this unilateral internationalist attitude presented by the Clinton administration, Dumbrell argues that "Clinton himself was concerned to retain and reinforce the exceptionalist tradition, and indeed tied humanitarian intervention into the narrative of American exceptionalism and special destiny."⁵ The humanitarian intervention in Kosovo offers exactly one such opportunity. Creating a place for the United States within the new world order, Clinton used executive orders for foreign policy purposes more than any other

³ Walter Russell Mead, *Special Providence – American Foreign Policy and How It Changed the World*, (Oxon: Routledge, Taylor & Francis Books, Inc., 2002), xvii

⁴ William J. Clinton, *My Life*, (New York, NY: Alfred A. Knopf, 2004), 581

⁵ Dumbrell, 2009, 80

president in the twentieth and twenty first centuries as he, in the words of Mandelbaum, sought to conduct “foreign policy as social work”.⁶

Drawing on the National Emergencies Act and the International Emergency Economic Powers Act (IEEPA), Clinton issued economic sanctions towards the Republic of Serbia in an effort to put their massacres to halt. When such efforts failed to succeed, Clinton referred to his constitutional powers and U.S. law through section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112) and later section 12304 of title 10 of the United States Code, to justify his issuance of Executive Order 13119 *Designate the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Airspace above, and Adjacent Waters as a Combat Zone* and Executive Order 13120 *Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty* without Congress’ authorization to use American forces abroad. Although Clinton’s conduct of war through executive orders was controversial his references to American law and by informing Congress as consistent with the War Powers Resolution, he gave Congress numerous chances to stop American engagement in the NATO operation.

The humanitarian intervention in Kosovo was criticized from all angles; from those advocating non-intervention to those advocating for more persuasive on-target intervention through ground-troop deployment. Moreover, the intervention was conducted to a large degree through executive orders, and this raised critique in relation to the War Powers Resolution (*Campbell v. Clinton*) and further in connection with issues of separation of powers and the constitutional checks and balances. Albeit these are real and utterly important issues, more than anything, I would argue that Congress’ indecisiveness regarding the votes on Kosovo interventions is evidence of the importance of the executive being able to use tools such as executive orders to react swiftly when a situation requires immediate action. From the inconsistent voting pattern one can argue that was the case of whether to intervene or not left to Congress to decide, the outcome for the Kosovars might have been quite different. The situation required swift action, and even though Clinton and NATO alike were rather slow to act, an authorization by Congress would most likely have prolonged the time of reaction even further, thus risking even more Kosovar lives.

⁶ Michael Mandelbaum, *Foreign Policy as Social Work*, Foreign Affairs, Vol. 75, (Jan/Feb., 1996) pp. 16-32, online via JSTOR, <www.jstor.org/stable/20047465>, 17

Appendix A – Executive Orders
for Foreign-Policy Purposes

Table 1								
	Clinton: 1993-1995	Clinton: 1995-2001	Clinton: 1993-2001	F.D. Roosevelt (1937-1945)	Truman	Eisenhower	J. F. Kennedy	L.B. Johnson
Export controls	2	5	7	8	0	0	0	0
Foreign economic policy	10	16	26	6	2	2	0	5
Foreign trade	4	4	8	4	5	1	0	3
Foreign aid	0	2	2		3	3	0	1
Establishment of international or treaty-based organizations	0	0	0	0	0	0	0	0
Management of territories (Philippines, Puerto Rico, the Canal Zone)	0	0	0	49	26	8	1	2
Management of immigration	1	1	2	4	4	1	1	0
Foreign affairs and diplomatic relations generally	10	7	17	7	13	8	2	9
Sum:	27	35	62	78	53	23	4	20
Total number of Executive Orders	111	253	364	2019	896	486	214	324
Percentage of E.O. for foreign- policy purposes	24,32	13,83	17,03	3,86	5,92	4,73	1,87	6,17

Appendix A – Executive Orders
for Foreign-Policy Purposes

Table 1 continues							
	Nixon	Ford	Carter	Reagan	Bush	Clinton	Bush jr. (2009-2011)
Export controls	4	6	4	4	0	7	3
Foreign economic policy	1	0	4	8	6	26	11
Foreign trade	1	4	7	1	10	8	4
Foreign aid	0	2	2	1	0	2	0
Establishment of international or treaty-based organizations	0	0	0	0	0	0	0
Management of territories (Philippines, Puerto Rico, the Canal Zone)	0	0	3	1	0	0	0
Management of immigration	0	1	5	3	2	2	0
Foreign affairs and diplomatic relations generally	7	4	14	3	8	17	18
Sum:	13	17	39	21	26	62	36
Total number of Executive Orders	346	169	320	381	166	364	291
Percentage of E.O. for foreign-policy purposes	3,76	10,06	12,19	5,51	15,66	17,03	12,37
							12,96

Appendix A – Executive Orders
for Foreign-Policy Purposes

Table 2	
Total number of E.O for foreign-policy purposes	406
Total number of E.O issued in the period assessed	6465
Percentage of E.O. for foreign-policy purposes	6,28

Table 3	
Clinton	
The average number of E.O issued annually, 1993-1995	55,50
The average number of E.O issued annually, 1995-2000	42,17
Difference	13,33
Percentage E.O.s of economic foreign policy	45,90

Appendix B – Clinton’s Executive Orders
for Foreign-Policy Purposes

Table 1	Clinton		
	1993-1995	1995-2001	sum
Export Controls	3	2	5
Military Exports	0	1	1
Foreign Economic Policy	1	2	3
Foreign Economic Sanctions	10	14	24
Foreign Aid	0	1	1
Foreign military Assistance	1	4	5
Domestic Economic Administration	10	14	24
Foreign Economic Administration	2	9	11
NAFTA, International Trade and Trade Organizations	3	1	4
Foreign Trade	1	6	7
General International Cooperation	3	5	8
Anti-Proliferation Policies	4	2	6
Globalization Efforts/Preparation - Technology	1	6	7
Foreign Affairs and Diplomacy	5	8	13
Sum	44	75	119

Appendix B – Clinton’s Executive Orders
for Foreign-Policy Purposes

Table 2				
	Clinton			
	1993-1995	1995-2001	1993-2001	Percentage of the 364 E.Os issued from 1993-2001
Percentage of E.Os dealing explicitly with free trade	6,82	1,33	3,36	1,10
Percentage of E.Os dealing with foreign economic sanctions	22,73	18,67	20,17	6,59
Percentage of foreign military Assistance	2,27	5,33	4,20	1,37
Percentage of domestic economic administration	22,73	18,67	20,17	6,59
Percentage of foreign economic administration	4,55	12,00	9,24	3,02
Percentage of executive orders related to foreign policy of export, trade, economic sanctions, economic administration, international trade organizations and general economic foreign policies	45,45	46,67	46,22	15,11

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